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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-703

CONNECTICUT COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES

Petitioner,

v.

VEEDER-ROOT COMPANY, A DIVISION OF VEEDER INDUSTRIES, INC.

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CONNECTICUT

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INDEX

	Page
Opinions Below	1
Jurisdiction	1
Questions Presented	1
Statute and Constitutional Provisions Involved	2
Statement of Case	2
Reasons for Granting Writ	4
Conclusion	17
Appendix	
Decision and Order of the Hearing Tribunal	19
Summary of Testimony of Hilda G. Moe before the Hearing Tribunal	47
Excerpts from Petitioner's Briefs to the Connecticut Supreme Court	51
Memorandum of Decision of the Superior Court for Hartford County	53
Opinion of the Supreme Court of the State of Connecticut	71

Connecticut General Statutes, §§ 31-127 and 31-126(a) 89

42 U.S.C. §§ 2000e 91

Table Of Authorities

Cases:

Bowe v. Colgate-Palmolive, 416 F. 2d 711 (7th Cir., 1969) 9, 12, 67, 80

Brown v. Western Railway of Alabama, 355 U.S. 41 (1957) 11

Burton v. Wilmington Parking Authority, 365 U.S. 715 (1961) 6

Chambers v. Mississippi, — U.S. —, 35 L. Ed. 2d 297 (1973) 15

Frontiero v. Richardson, — U.S. —, 41 U.S.L.W. 4609 (1973) 5

Griggs v. Duke Power Co., 401 U.S. 424 (1971) 8

Hines v. Davidowitz, 312 U.S. 52 (1941) 14

Jenkins v. United Gas Co., 400 F. 2d 28 (5th Cir., 1968) 7

Marbury v. Madison, 1 Cranch 137 (1803) 13

Meat Cutters v. Safeway Stores, 4 F.E.P. Cases 510, 4 E.P.D. ¶ 7670 (D. Kan., 1972) 13

Newman v. Piggie Park Enterprises, 390 U.S. 400 (1968) 9

Perez v. Campbell, 402 U.S. 637 (1971) 14

Potts v. Flax, 313 F. 2d 284 (5th Cir., 1963) 6, 7

Reed v. Reed, 404 U.S. 71 (1971) 5

Sanchez v. Standard Brands, 431 F. 2d 455 (5th Cir., 1970) 9, 10

Shelley v. Kraemer, 334 U.S. 1 (1948) 6

U.S. ex rel. Smith v. DiBella, 314 F. Sup. 446 (D. Conn., 1970) 16, 17

Veeder-Root v. Commission on Human Rights and Opportunities, 35 Conn. Law Journal, No. 5, p. 1 (1973) 5, 10

Constitutional Provisions:

United States Constitution

Supremacy Clause (Article VI) 2, 10, 12, 14

Fourteenth Amendment 1, 2, 4, 6, 7, 8, 15, 16, 51, 52, 55

Statutes:

28 U.S.C. § 1257(3) 1

42 U.S.C. § 2000e-1 *et sec.* 2, 8, 9, 10, 11, 12, 13, 15, 16, 25, 29, 30, 43, 52, 57, 74, 80, 91, 92

Connecticut General Statutes, §§ 31-123 through 51-128 2, 3, 10, 11, 12, 13, 15, 19, 26, 29, 30, 33, 41, 44, 51, 53, 54, 55, 57, 58, 59, 60, 64, 65, 66, 70, 72, 74, 76, 78, 79, 80, 81, 82, 84, 86, 89

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CONNECTICUT

Petitioner prays that a writ of certiorari issue to review the judgment of the Supreme Court of the State of Connecticut entered July 31, 1973.

OPINIONS BELOW

The Decision and Order of the Hearing Tribunal is unreported and is set out in Appendix A, *infra*. The Memorandum of Decision of the Superior Court Referee is reported in 4 Employment Practices Decisions (E.P.D.), Paragraph 7801; and in 4 Fair Employment Practice (F.E.P.) Cases 783; and is set out in Appendix D, *infra*. The opinion of the Supreme Court of the State of Connecticut is reported in 35 Connecticut Law Journal, No. 5, page 1; and in 6 F.E.P. Cases 186; and is set out in Appendix E, *infra*.

JURISDICTION

The judgment of the Supreme Court of the State of Connecticut was entered on July 31, 1973. The jurisdiction of the Court rests on 28 U.S.C. § 1257 (3).

QUESTIONS PRESENTED

1. Where a state court had an individual citizen complaint before it fairly charging discrimination against a class, and where the record supported such charges, did the court violate its Constitutional duty under the Fourteenth Amendment to eliminate such discrimination as was found by limiting its relief to the immediate effect upon the complainant but denying relief from the pattern of discrimination of which she complained?

2. Whether a state court violates national policy under Title VII of the 1964 Civil Rights Act by interpreting a deferred citizen complaint of discrimination under that Act so narrowly as to frustrate the national policy against discrimination.

3. Whether the Supremacy Clause imposes upon a state court the Constitutional duty to provide relief consistent with Title VII of the 1964 Civil Rights Act and the national policy against discrimination in employment when deciding a case under a State Fair Employment Practices Law in connection with a federal deferral under Title VII.

4. Whether a rigidly narrow interpretation by a state court, relying on technical rules of pleading, of a discrimination complaint violated "fundamental fairness" and due process of law.

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

The statutes involved are *Conn. Gen. Stat.* § § 31-123 through 31-128; and Title VII of the 1964 Civil Rights Act, 42 U.S.C. § 2000e. The constitutional provisions are Article VI and the Fourteenth Amendment to the United States Constitution.

STATEMENT OF THE CASE

On February 26, 1969 Hilda G. Moe filed a complaint against her employer, the respondent Veeder-Root Company, with the petitioner, State of Connecticut, Commission on Human Rights and Opportunities. The complaint charged that she and other female assemblers of counting devices (Assemblers A) in Department 99 at the respondent's Hartford plant were paid less than male assemblers (Assemblers

B) who did the same basic work in that department. As a result of this system she claimed to have been discriminated against because of her sex in violation of Section 31-126 (a) of the Connecticut General Statutes.

After the prescribed investigation the complaint was certified and the Commission caused a public hearing to be held on eight days over a period of several months. The Hearing Tribunal found that respondent's job classifications were based solely on sex and resulted in unequal pay for equal work to women in respondent's Department 99. The Tribunal ordered respondent to cease and desist from its discriminatory job classification, to remove the by-products of this system, and to pay equal wages for equal work. It further ordered that respondent pay to Hilda G. Moe the difference between Assembler A and Assembler B wages from October 1, 1967 (the effective date of the State statutory amendment barring sex discrimination) to the date of payment.

The respondent appealed the Tribunal's Decision and Order to the Superior Court for Hartford County, which affirmed the Tribunal's finding of discrimination. The Court, however, struck out that part of the order which forbade continuing discriminatory job classifications in Department 99, limiting its effect to Hilda G. Moe alone, on the ground that the order went beyond the scope of the complaint and attempted to adjudicate matters involving the rights of persons not given notice and an opportunity to be heard. The Court also restricted the back pay differential to wages paid after January 22, 1969.

The petitioner appealed from the judgment of the lower court to the Supreme Court of the State of Connecticut and assigned as error the modification of the Tribunal's Order. In its brief and reply brief to the Connecticut Supreme Court, the petitioner raised constitutional issues with respect to the lower court's decision:

"The failure of the Superior Court to rule on the Title VII rights of the complainant did not excuse its obligation to protect Fourteenth Amendment rights." Appendix C, *infra*.

Thereafter by decision dated July 31, 1973 the Supreme Court of the State of Connecticut affirmed the judgment of the Superior Court as to the scope of the Order, and modified the award of back pay to include the differential from the date ninety days before the filing of the complaint to the date of payment.

REASONS FOR GRANTING WRIT

I.

Certiorari should be granted in this case because the Connecticut Supreme Court has decided a question involving Fourteenth Amendment rights under the Equal Protection Clause in a manner which is not in accord with the decisions of this court.

It is the petitioner's position that, having specifically found that a pattern of systemic discrimination had been established below, the Connecticut Supreme Court engaged in an unconstitutional approval of discrimination when it expressly declined to eliminate the causes and the consequences of proven discrimination.

In the present case the complaint before the petitioner Commission contrasted the pay rates of "men" and "women" in department 99; it recited that Ms. Moe did "not feel the men are doing any different work than the women are;" and it made numerous other references in the plural to "men"

and "women" employees in department 99.[1] At the administrative hearing, which was held on eight days spread over a period of several months, the arguments and proofs of both sides were addressed to the effects of and the possible justifications for the job classification system which covered each assembler in department 99.[2]

Thus were the consequences and the breadth of the respondent's discriminatory system of job classification raised before the hearing tribunal, the Superior Court for Hartford County and the Supreme Court of Connecticut by the complaint and by the record of the administrative hearing. Indeed, the Connecticut Supreme Court expressly noted that discrimination against the whole class of women employees in department 99 had been made out:

> "As the hearing progressed and it became apparent that sex discrimination existed in department 99 on a department wide basis . . ." *Veeder-Root v. Commission*, 34 Conn. Law Journal, No. 5, at p. 4.

Nevertheless, the court did not reinstate or enforce the tribunal's order that sex discriminatory aspects of the job classification system in department 99 cease; rather, it limited the order so that it prohibited only the application of the job classification to Ms. Moe, thereby in effect sanctioning the operation of the proven discriminatory system as applied to Ms. Moe's female co-workers. This result is at odds with a state court's duty to eliminate discrimination, as applied to sex discrimination in *Reed v. Reed*, 404 U.S. 71 (1971) and *Frontiero v. Richardson*, 41 U.S.L.W. 4609 (1973).

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[1]See Appendix E (*Veeder-Root v. Commission*, Conn. Supreme Court, 35 Conn. Law Journal, No. 5, p. 1. Footnote 2).

[2]See Appendix E (Dissent of Bogdanski, J.)

In *Burton v. Wilmington Parking Authority*, 365 U.S. 715 (1961) this court noted that "no state may effectively abdicate its [Fourteenth Amendment] responsibilities by either ignoring them or by merely failing to discharge them whatever the motive may be." *Id.*, 725.

The Court of Appeals for the Fifth Circuit has applied this conception of a Court's Fourteenth Amendment duties to issues similar to those raised by this petition:

> "Fifth, and perhaps most important, the relief to the class as it was sought and obtained was a good deal more than something merely appropriate. There is at least considerable doubt that relief confined to individual specified Negro children could be granted or, if granted, could be so limited in its operative effect. By the very nature of the controversy, the attack is on the unconstitutional practice of racial discrimination. Once that is found to exist, the court must order that it be discontinued. Such a decree, of course, might name the successful plaintiff as the party not to be discriminated against. But that decree may not — either expressly or impliedly — affirmatively authorize continued discrimination by reason of race against others." *Potts v. Flax*, 313 F.2d 284, 289 (5th Cir., 1963).

While *Potts* was a suit to desegregate a public school system, the Court of Appeals questioned in general terms whether a court, once it found discrimination, could fail to provide for a thorough remedy without in the same act placing the imprimatur of the State on the remaining, unremedied discrimination.

In *Shelley v. Kraemer*, 334 U.S. 1 (1948), this court held that state courts have a duty under the Fourteenth Amendment not to sanction private acts of discrimination:

> "The judicial action in each case bears the clear and unmistakable imprimatur of the State. We have noted that previous decisions of this court have established the proposition that judicial action is not immunized from the operation of the Fourteenth Amendment simply because it is taken pursuant to the State's common law policy." *Id*, 334 U.S. 1, 20

This formulation was modernized in an employment discrimination suit against a private employer in *Jenkins v. United Gas Corp.*, 400 F.2d 28 (5th Cir., 1968). In reversing the District Court's decision that the case should be dismissed because the employer had promoted the plaintiff, the court expressed concern for the class of other employees affected by the type of discrimination alleged.

> "Indeed, if class-wide relief were not afforded expressly in an injunction or declaratory order issued in Employee's behalf, the result would be the incongruous one of the Court — a Federal Court, no less — itself being the instrument of racial discrimination which brings to mind our rejection of like arguments and result in *Potts v. Flax*, 5th Cir., 1963, 313 F.2d 284, 289." *Jenkins, supra*, at 34.

In the present case the parties and the Connecticut Supreme Court clearly recognized that the job classification system in department 99, and its discriminatory effect on all women in the department, were in controversy. In the dissent of Justice Bogdanski of that court, it is recognized that, under these circumstances,

> [T]he commission would have ignored its statutory responsibility had it merely sought to redress the individual grievance of Ms. Moe."[3]

[3]See Appendix E, infra.

It is submitted that the Fourteenth Amendment imposes a duty upon the Connecticut Supreme Court to remedy such discrimination as has been established and found in a proceeding before it. Failure to remove the causes and consequences of such discrimination amounts to an unconstitutional approval of discrimination by the highest court of the State of Connecticut.

By analogy and comparison, this court in *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971), emphasized that it would address the consequences, not just the immediate acts and motivations, of a discriminatory employment practice.

> "What is required by Congress is the removal of artificial, arbitrary and unnecessary barriers to employment when the barriers operate invidiously to discriminate on the basis of racial or other impermissible classification. *Id.*, 431.

As will be seen below, this statement bears upon the present case in more than an indirect way as the case is also a deferral by the United States Equal Employment Opportunity Commission to the Connecticut Commission on Human Rights and Opportunities under Title VII of the 1964 Civil Rights Act.

II.

Certiorari should be granted in this case because the Connecticut Supreme Court's strict application of local practice rules has compromised complainant's rights under federal law.

That the 1964 Civil Rights Act articulated a national policy against discrimination, a "policy that Congress considered of the highest priority," was established by this court

in *Newman v. Piggie Park Enterprises*, 390 U.S. 400, (1968). Subsequent decisions of the lower federal courts have implemented this policy virtually without reservation.

Thus in overruling the lower court's dismissal of a complaint based on technical defects of pleading, the Court of Appeals for the Fifth Circuit aptly characterized its duty in employment discrimination cases:

> "The basic purposes of the Act, however, are clearly discernable. Mindful of the remedial and humanitarian underpinnings of Title VII and of the crucial role played by the private litigants in the statutory scheme, courts construing Title VII have been extremely reluctant to allow procedural technicalities to bar claims brought under the Act. Consequently, courts confronted with procedural ambiguities in the statutory framework have, with virtual unanimity, resolved them in favor of the complaining party." *Sanchez v. Standard Brands*, 431 F.2d 455, (5th Cir., 1970).

The necessity of broadly construing citizen complaints of sex discrimination was unequivocally stated in *Bowe v. Colgate-Palmolive Co.*, 416 F.2d 711 (7th Cir., 1969), holding that a district court was not limited in granting its relief to the named plaintiffs but could remedy the entire discriminatory practice of the employer. The court recognized that "the evil sought to be ended is discrimination on the basis of a class characteristic, i.e. race, sex, religion or national origin", and overruled the lower court's decision that each class member must meet the jurisdictional prerequisites to private suit under Title VII.

The Connecticut Commission on Human Rights and Opportunities has been formally designated by the United States Equal Employment Opportunity Commission as a

deferral agency, with the explicit and implicit recognition that the Connecticut Fair Employment Practices Act in its language and obvious meaning is equivalent to Title VII.[3a] The Connecticut Supreme Court, however, did not give adequate consideration to and violated its duties under the Supremacy Clause in interpreting the State statute without regard to the federal scheme.

Even though the actual language of Ms. Moe's complaint,[4] the record of the administrative hearing,[5] and the briefs of the parties[6] were addressed to the entire job classification system, the court, solely because the complaint concluded with the words "I feel I am being discriminated against because of my sex," held that her complaint "did not provide [Veeder-Root] with notice of the scope of the action," and accordingly refused to reinstate the administrative tribunal's order that sex discrimination be eliminated from the job classification.[7]

The importance of the facts alleged, as compared with the legal conclusion attached, by a lay pleader was emphasized in *Sanchez v. Standard Brands, supra*, where sex rather than national origin discrimination had mistakenly been alleged.

> In the context of a statute like Title VII it is inconceivable that a charging party's rights should be cut off merely because he fails to articulate correctly the legal conclusion emanating from his factual allegations. Surely the only procedural requirement which should confront a Title VII complainant is that he state, within the

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[3a]See Appendix G, *infra*.
[4]See Appendix E, *infra*, the court's footnote 2.
[5]See Appendix A, *infra*.
[6]See Appendix C, *infra*.
[7]*Veeder-Root v. Commission*, 35 Conn. Law Journal, No. 5, p. 1 (Appendix E).

90-day period facts sufficient to trigger a Commission investigation." *Id.*, 431 F.2d 455 (5th Cir., 1970).

A similar situation was presented to this court in *Brown v. Western Railway of Alabama*, 338 U.S. 294 (1949), where a state court had relied on its practice of construing allegations strictly against the pleader in dismissing petitioner's action in state court for damages under the Federal Employees' Liability Act. Mr. Justice Black expressed the majority's view in strong terms:

> "Strict local rules of pleading cannot be used to impose unnecessary burdens upon rights of recovery authorized by federal laws. 'Whatever springes the state may set for those who are endeavoring to assert rights that the state confers, the assertion of federal rights, when plainly and reasonably made, is not to be defeated under the name of local practice.' [Citations omitted]. Should this court fail to protect federally created rights from dismissal because of over-exacting local requirements for meticulous pleadings, desirable uniformity in adjudication of federally created rights could not be achieved. [Citations omitted]. *Id.*, 298-299.

The present case is likewise set in the context of enforcement by state administrative agencies and state courts of rights existing under federal laws. Title VII of the 1964 Civil Rights Act, which bars sex discrimination in employment by terms similar to those of the Connecticut Fair Employment Practices Statute,[8] requires the United States Equal Employment Opportunity Commission (EEOC) to defer complaints to state agencies which offer rights and remedies equivalent to those available under Title VII.[9]

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[8]Compare 42 U.S.C. §2000e-2(a) with Conn. Gen. Stat. §31-126(a); see Appendices F and G, *infra*.

[9]Appendix G, *infra*.

Indeed, Ms. Moe's complaint did originate under federal law, and was deferred to the petitioner by the EEOC pursuant to the federal statutory scheme. This fact was made plain in the record of the administrative hearing,[10] and in petitioner's briefs before the Superior Court and the Supreme Court.[11] In response to the petitioner's assertion of Ms. Moe's federal rights, and of the rights of the other female workers in department 99, the Superior Court announced that "the doctrine of that case [*Bowe v. Colgate-Palmolive, supra*] constitutes a radical and unsound departure" from Connecticut practice. 4 E.P.D. ¶7801, at p. 6070.

The existence of the federal right in this case has been plainly and repeatedly raised. It has been "defeated under the name of local practice." This court should grant certiorari to more fully consider the inconsistency of the decision below with the intent and purpose of the federal scheme of enforcement of Title VII of the 1964 Civil Rights Act.

III.

Certiorari should be granted because the Connecticut Supreme Court failed to exercise its duty under the Supremacy Clause to interpret the relief provisions of the Connecticut Fair Employment Practices Act in a manner consistent with the federal statutory scheme and with the purposes of the federal legislation.

As has been noted, *supra*, Title VII of the 1964 Civil Rights Act bars sex discrimination in employment in terms very similar to those of the Connecticut Fair Employment Practices Act.[12] Further, both acts, until recent amendment to Title VII, required that complaints be filed within 90

[10]Appendix A, *infra*.
[11]Appendix C, *Infra*.
[12]See Footnote 8, *Supra*, and accompanying text.

days of the alleged discrimination,[13] but neither made any provision for how far back in time courts and administrative agencies might look in awarding back pay.

By amendment effective March 24, 1972,[14] Congress has provided that back pay may be assessed from a date not more than two years prior to the filing of the complaint. Federal courts had consistently held, prior to the amendment, that the back pay period ran at least that far, some extending it back to the effective date of Title VII on July 2, 1965. *Meat Cutters v. Safeway Stores*, 4 F.E.P. Cases 510, 4 E.P.D. ¶7670 (D. Kan., 1972). Thus have both the courts and the Congress recognized that the short 90-day statute of limitation under Title VII is not a proper measure of the chronological reach of back pay awards.

Ms. Moe's complaint was originally filed with EEOC under federal law (Title VII), and was deferred, as required by that law, to the petitioner, Connecticut Commission on Human Rights and Opportunities.[15] Notwithstanding this fact, the Connecticut Supreme Court limited the back pay period to 90 days before the filing of the complaint, based on the 90-day statute of limitation. This limitation leaves much discrimination uncompensated. The entire purpose of the deferral scheme set out by Congress in Title VII is thereby frustrated.

As early as *Marbury v. Madison*, 1 Cranch 137 (1803), this court interpreted the Supremacy Clause to require that state judges

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[13]42 U.S.C. §2000e-5(e); Conn. Gen. Stat., §31-127.

[14]See March 24, 1972, P.L. 92-261, 86 Stat. 103, amending 42 U.S.C. §2000e-5(g).

[15]See Footnotes 9-11, *Supra*, and accompanying text.

> "[W]ere not to decide merely according to the laws or constitution of the state, but according to the laws, constitution and treaties of the United States — 'the supreme law of the land.'" *Id.*, 340-41.

And more recently in *Hines v. Davidowitz*, 312 U.S. 52 (1941), it was established that the test under the Supremacy Clause is

> "Whether, under the circumstances of this particular case, [the state statute] stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Id.*, 67.

It was reiterated in *Perez v. Campbell*, 402 U.S. 637, 652 (1971), that "state legislation which frustrates the full effectiveness of Federal law is rendered invalid by the Supremacy Clause." To save the state statute's constitutionality, a state court would be required to interpret state law accordingly. It is submitted that it is wholly inconsistent with the purposes and objectives of Congress — which allows awards of back pay for two years prior to filing — that the Connecticut Supreme Court should hold complainants under the state Fair Employment Practices Act in a Title VII deferral to a maximum award limited to 90 days prior to filing a complaint.

IV.

The Connecticut Supreme Court's narrow construction of this lay-drafted complaint is so fundamentally unfair as to deny complainant due process of law.

In the present case, complainant, as recognized by the dissenting opinion in the Court below, sought to eliminate not merely direct acts against herself but a pattern of discrimination against her as a member of a class of persons.

The opinion of the Court below in effect permits this pattern of discrimination to continue but artificially immunizes complainant from its effects. This result is said to follow from complainant's failure to draft her lay complaint in accordance with rules appropriate to a lawyer's hand. Such a rigid construction of her lay complaint is fundamentally unfair, results in the denial of equal protection alluded to in the argument, first above, and also violates due process. Under Connecticut law, a complaint by a layman initiates the process of enforcement of the antidiscrimination laws. (Connecticut General Statutes § 31-127). According to the Connecticut Supreme Court below, a complaint drawn more precisely would have required broader relief, there being a specific finding of a pattern of discrimination. Thus, the reason for denying complainant full and adequate relief from the pattern found is her inarticulately drawn lay complaint. The cases noted above in which federal courts have tenderly construed lay Title VII complaints to effectuate the purposes of the law afford a striking contrast to this Connecticut state court approach.

In *Chambers v. Mississippi*, — U.S. — 35 L. Ed. 2d 297 (1973), this court reversed and remanded a decision of the Mississippi Supreme Court even though the state court's decision was based on a state criminal evidentiary rule and did not rule on the petitioner's Fourteenth Amendment claim. This court disclaimed any new principles which might be inferred from the decision, and held simply that, under the circumstances of this case, the state decision had offended "traditional and fundamental standards of due process." *Id.*, 313.

Fundamental fairness has not been afforded to Ms. Moe in this case. Since 1965, the effective date of Title VII, she has been attempting to obtain redress for her grievance. In July, 1965 she complained to her departmental super-

visor on the basis of Title VII about unequal pay and improper classification between men and women in department 99; her protest was dismissed out of hand.[16] Also in 1965 she complained to her union steward, who, after admitting that the differential in pay was unjustified, contrary to his promises, failed to pursue the matter.[17] Meanwhile, Ms. Moe filed a complaint with the EEOC in Washington, D.C., which subsequently instructed her to file same with their New York City divisional office.[18] Whereupon, she was told that the matter would have to be handled by the petitioner Connecticut Commission.[19]

Ms. Moe has been continuously attempting to vindicate her rights; she has not sat on them. She should not now be told that the complete relief to which she was entitled is to be denied her because of technical niceties of local pleading where, as noted by the dissent below, she fairly stated her claim. To limit relief in this fashion is so fundamentally unfair as to constitute a denial of due process of law within the meaning of the Fourteenth Amendment.

In *U.S. ex rel. Smith v. DiBella*, 314 F. Supp. 446 (D. Conn., 1970), a state trial court had dismissed plaintiff's appeal because it had been filed late, due to confusion among his attorneys. The court, in overturning a Connecticut state court's overly technical procedural emphasis, found the substantive rights of the individual citizen more impressive than state procedural rules:

> " 'Conventional notions of . . . litigation have no place where . . . liberty is at stake and infringement of constitutional rights is alleged.' [Citations omitted] The

[16]See Appendix B, *infra*. par. 18.
[17]See Appendix B, *infra*, par. 19-20.
[18]See Appendix B, *infra*, par. 21.
[19]See Appendix B, *infra*, par. 22.

> Supreme Court has already held that a defendant who 'did all he could' . . . was entitled to be heard. [Citations omitted] What more can a defendant do than entrust his rights to an officer of the court." *Id.*, 450.

It is submitted that the rights at stake in Ms. Moe's complaint, so firmly founded in the Constitution and in national policy, are at least as worthy of preferred treatment as measured against local rules of pleading as the right to be free of a minor jail term in *Smith, supra.*

CONCLUSION

The petition for certiorari should be granted.

Respectfully submitted,

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APPENDIX A

STATE OF CONNECTICUT COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES

HILDA G. MOE, COMPLAINANT

v.

VEEDER-ROOT COMPANY

DECISION OF HEARING TRIBUNAL

STATEMENT OF THE CASE

On February 19, 1969, Hilda G. Moe of South Glastonbury, Connecticut, filed a complaint with the Commission on Human Rights and Opportunities against Veeder Root Company, alleging that by certain acts and practices, the Veeder Root Company discriminated against her on the basis of sex.

Pursuant to section 31-127 of the General Statutes of Connecticut as amended, and section 31-125-19 of the Rules and Regulations of the Commission on Human Rights and Opportunities, the Commission issued a notice of public hearing to the Veeder Root Company.

Respondents, in their answer of December 30, 1969, denied any violation of section 31-126, sub-section (a) of The Connecticut General Statutes as amended.

Hearings were held on January 20th, January 27th, March 31st, April 20th, April 21st, May 18th, May 19th, November 10th, and December 10th, 1970 before a duly appointed Hearing Tribunal composed of Emanuel N. Psarakis, Esquire, Chairman, G. Leon Silverman, and Matthew Shaf-

ner, Esquire. At all hearings, the parties appeared, were represented by counsel and were given full opportunity to present evidence, cross examine witnesess and present arguments.

At these hearings and at a view of the premises and of the Company department in question, voluminous testimony and many exhibits were offered into evidence by Respondent and Complainant. The Tribunal has reviewed, examined and analyzed personnel records, application records, job descriptions, seniority lists, the experience of all relevant personnel, work categories, job progression records, transfer records, prior and present collective bargaining contracts, each counter submitted into evidence by Respondent, the various Veeder Root product catalogues and counter descriptions contained therein, showing the assembly work done at Department 99 of Veeder Root.

On the basis of the foregoing testimony, exhibits and observations, the Hearing Tribunal having heard and weighed all of the evidence, and having considered all of the arguments has issued the following opinion and decision setting forth its finding of facts, reasoning and conclusion.

FINDINGS OF FACTS, OPINION AND DECISION

Summary of Facts:

The Veeder Root Company, an operating division of Veeder Industries, Incorporated, has a plant in Hartford, Connecticut which manufactures, among other products, various types of counting machines, or "counters". The Hartford facility manufactures approximately 200 different types or "families" of basic counters. Because of the variations of these counters, this facility can manufacture approximately 4,000 different counters.

The Company has a number of departments as its Hartford facility. Department 99, where the Complainant works, specializes in filling special orders of counters or trial counters for Respondent's customers. It further provides sample orders to customers, service on those orders, and also services to other departments of the Company.

Department 99 assembles or has assembled approximately 150 of the 200 basic families of counters.

Assembly work in Department 99 at the time of the filing of the complaint was done by three job classifications — from lowest to highest: assembler A assembler B and assembler A (prime). Fourteen women and seven men assemble counters in Department 99. The issue in this case concerns assemblers A and assemblers B, not assemblers A (prime).

As of the date of the filing of this complaint, all B assemblers were men and all A assemblers were women. During the history of the department and up to and including the date of the filing of the complaint no man had ever held a job of A assembler and no woman had ever held the job of B assembler.

As of October 1, 1967, assemblers B were paid $2.699 per hour. In November, 1969, assemblers B received a raise to $2.899 per hour. Assemblers A on the other hand received $2.215 per hour on October 1, 1967 and in November, 1969, assemblers A received a pay raise to $2.565 per hour. The Complainant's job title is assembler A, the lowest paid grade of assembler in Department 99. On October 1, 1967, therefore, there was a wage differential between assemblers A and B of .484 cents per hour and in November, 1969, the differential was .343 cents per hour. Assemblers B have always received a higher pay rate than assemblers A.

A and B assemblers work side by side in Department 99 assembling counters. B assemblers generally assemble different types of counters during the day, while the Complainant Hilda Moe generally worked on a particular family of counters known as the Visi-Counter. She had in the past, however, worked on other families of counters.

Testimony received during the hearings, as more particularly analyzed hereafter, also showed there was some overlap in the jobs and on occasions both A and B assemblers would assist each other in performance of their work.

Most assemblers generally assemble and learn to assemble a particular family of counters and perhaps some variations of various counters. There was no evidence introduced that any particular employee, whether A or B assembler assembles all of the 150 families of counters generally made by Department 99.

In working with these counters, both A and B assemblers use a variety of hand tools, use blue prints, assemble counters, test counters, adjust counters, and in general see to it that they assemble a counter which is in good working order, the end result being that it must work.

As part of the job of assembler in which a variety of hand tools are used, other tools are available for use by A and B assemblers such as presses, grinding machines, riveting and stamping machines.

The Complainant, Hilda Moe, has been employed continuously by the Veeder Root Company since January 4, 1949 and continuously worked at the Respondent's Hartford plant. She has worked in Department 99 since October 30, 1959. Her job assignment basically is assembling the family of counters known as the Visi-Counter.

In the general performance of her job, she builds this line of counter by obtaining parts from stock, reading of blue prints for various component numbers, gear ratio charts, order forms and bills of materials. Her job description calls for the use of a variety of hand tools available at her working bench and others available elsewhere, such as hammers, a ball-pean hammer, rubber mallets, a raw-hide mallet, various screw drivers, three kinds of pliers, tweezers, punchers, picks, reamers, brushes, knives, files, carborundum stones and gauges. The Complainant has also used drill presses, arbor-presses and a hobbing machine in the performance of her job. In addition to these tools used by Hilda Moe as an assembler A, assemblers B used those tools plus other tools such as hand reamers, hand facing tools, files, operated a drill press, bench grinder, riveting or stamping machine, used a foot press and also read dial indicators. In addition, as more fully set out hereafter, all assemblers had occasion to perform other tasks as part of their assembly job.

On occasion Hilda Moe has assembled other types of counters, including some of the counters which were assembled by B assemblers.

The Company has a collective bargaining agreement with Local 34, District 26 of the International Association of Machinists. The contract in effect as of the date of the filing of the complaint was dated November 29, 1966 and expired in November of 1969.

This contract classified assemblers as to A and B assemblers.

The agreement between the Company and the union also recognizes two kinds of seniority: Departmental and plant wide. Workers are laid off in a department strictly on the basis of seniority. Employees with plant wide seniority being laid off or in a lay-off status have the right to fill open

jobs for which they are qualified on the basis of their job records. If there are no open jobs, people with plant wide seniority can "bump" employees with less seniority in other departments doing work which they are qualified to perform.

Under the contract, promotions to open jobs within a department are based upon departmental seniority, provided the employee is capable of performing satisfactorily the requirements of the job as demonstrated by past performance. Under the contract, an employee with more plant wide seniority being laid off in another department does have the right to an open job in another department as against an employee with less seniority within that department claiming a promotion to an open job, providing, the employee with the greater plant wide seniority is capable of performing satisfactorily the requirements of that job as demonstrated by past performance on his job record.

The contract contains no provision for job posting where there are open jobs.

The collective bargaining agreement contains certain provisions and enforcement machinery for the protection of the employees with regard to various situations set forth in the contract and with respect to their jobs, promotions and lay-offs.

Employees have been classified in Department 99 as to assembler B (male) and assembler A (female) in accordance with a written job description which has been in effect for a long time. Both the union and the company officials testified the job description is no longer in effect as of the date of the filing of the complaint, however, other company officials testified that these particular job descriptions were still used as of the filing of the complaint.

The Charge:

The complaint filed by Hilda Moe on February 26, 1969, states that she had complained to the general manager "why women assemblers in my department were doing the same jobs as men assemblers — yet, the women were only receiving $2.21 per hour while the men received $2.69 per hour". The complaint further states she had also asked to see the men's job classification which the manager refused to show. In addition, the Complainant states that when the Civil Rights Law went into effect in 1965, she had made a similar inquiry to her supervisor.

In addition, the complaint states that Hilda Moe had worked for the Company for 20 years and in Department 99 for 9 years. It further states that she "does not feel the men are doing any different work than the women are". The complaint then states that on the basis of the two incidents and her past experience in this Company she is being discriminated against because of her "sex".

This Tribunal believes that by the filing of such complaint the Respondent was placed on notice of discrimination on the basis of sex, both as a result of the differential in pay, and with regard to the job classification system and as of the result of her past experience in this Company.

This Tribunal believes that the scope of the charges include not only the differential in pay, but also attack the discriminatory system in effect at Veeder Root, and as such system was applied to Hilda Moe. Her charges arise basically out of the alleged discriminatory classification system at Veeder Root.

This Tribunal has taken evidence, made findings and conclusions with respect to those unlawful employment practices which grow out of the proceedings and the entire

record before this Tribunal which are related to the charge filed. We believe that examination of the evidence relating to the entire discriminatory system brought out at the hearings as evidenced by the overall record in this case was warranted on the basis of the complaint as it relates to the issue of wage differential, and as it relates to whether the present classification system in effect discriminates against Hilda Moe.

Any other result would be destructive of the beneficent ends of the Connecticut Act. It appears to us that a large number of charges filed before this Commission are filed by ordinary people unschooled in the technicalities of the law. To compel the Charging Party to specifically articulate in the charge filed with this Commission the full panoply of discrimination he or she may suffer, may cause the very persons that this Act was designed to protect to lose that protection because they are ignorant or unable to thoroughly describe the discriminatory practices to which they are subjected.

We believe that the complaint may properly encompass any such discrimination like or reasonably related to the allegations growing out of the charge. In particular in this case, the Respondent requested no further specificity with respect to the charges and introduced evidence with regard to the classification system as a defense in this case both at trial and in its brief. The Respondent we find, was afforded and had full opportunity to defend on this basis, make its case, and present witnesses on its behalf. It did present fully and completely its defense to the charge of discrimination both as it related to the issue of pay and of the discriminatory job classification system and both sides filed able and extensive briefs and proposed findings of fact.

We find as a fact that the particular charge filed by Miss Moe is within the scope of the issues litigated and

briefed fully and completely by both parties in this case and within the scope of the Findings and Order set forth by this Tribunal.

Effect of Grievance Procedure on Proceedings:

At the outset, Respondent took the position that the privately tailored grievance arbitration procedures set up by the Company and the Union under the collective bargaining contract provide for resolution of the complaint before this Tribunal and accordingly, it should be dismissed.

It pointed to the fact that if any woman had any complaints in Department 99, that the collective bargaining contract, Section 4.3.1, allows the processing of a grievance if there is one with regard to the appropriate job classification and that Hilda Moe should have proceeded under the contract to arbitration.

However, any arbitration award in this case or any deferral to the contract procedures set up would not under the particular facts herein be determinative of the matters set forth in this complaint. Any arbitration award would only be as a result of an arbitrator interpreting and applying the collective bargaining contract. The arbitration award and the contract procedures set up are essentially a private system tailored to the needs of the contracting parties. This Tribunal cannot be bound by such contractual procedures where the remedies afforded under the Statute are devised to vindicate the public policy of the State of Connecticut, and not merely to afford private relief to the particular employees.

Moreover, these contractual provisions and any others contained in the collective bargaining contract are not adequate and indeed cannot cover the charges pressed by the

Complainant. While the contractual provisions may resolve the question of the appropriate job classification under the contract, the contractual provisions do not govern with regard to the issue of discriminatory rates of pay and discrimination on the basis of sex is not covered in the contract. It is clear there could be no possible way of resolving this particular complaint under the collective bargaining contract. For this reason, the Tribunal is of the opinion that the contractual provisions are not adequate, would not resolve the issues that are the subject of this hearing, and, accordingly, we find no reason to defer to possible grievance procedures under the contract.

Moreover, in any event, the public interest statute governs in this case and the provisions of a collective bargaining contract cannot serve to oust this Tribunal from determining whether there has been discrimination in this case on the basis of sex.

Conditions of Employment:

On the basis of the overall record in this case, this Tribunal concludes that it has been proven by a clear preponderance of the evidence that the prior classification and work system in existence in Department 99 at Veeder Root discriminated on the basis of sex.

Indeed, all of Respondent's witnesses testified as to this fact. Thus, jobs were classified as to male and female. There were separate male and female seniority lists, job cards were color coded for "male" and "female". There were separate male and female wage curves. Men and women were assigned to jobs on the basis of sex. Men received higher rates of pay than women. Women were never promoted to "mens" jobs. Overall seniority and experience were ignored in a number of instances and men were trans-

ferred to "mens" higher paying jobs in Department 99 notwithstanding the fact that in a number of instances women within the department had higher departmental *and* plant seniority, and, on the basis of the job record, more experience. Job descriptions ostensibly based on a factual point system, in fact operated to arbitrarily assign points on the basis of sex. In certain instances the same work done by men at the higher rate of pay and thereafter assigned to women on a permanent basis, was paid for at the lower women's rate. When men worked on "women's" work during slow periods they continued to receive the same wages as required by the collective bargaining contract and yet when women did "men's" work in the department for any length of time, they did not receive the higher man's pay. Once the company trained a woman to do the man's job she thereafter, received pay at the woman's rate.

Since the passage of the Federal Equal Pay Act of 1963, the Federal Civil Rights Act of 1964, and the Sex Amendment to the Connecticut Act in October, 1967, and up to and including the date of filing of this complaint, the prior discriminatory system was changed by Respondent only in the following respects:

The dual male and female wages curves were eliminated, the separate seniority systems were abolished and the company and the union in 1966 agreed upon a new set of criteria — skill, effort, responsibility and working conditions to replace the existing point systems as set forth in the job descriptions. However, despite the agreement as to a new set of criteria, the change was not instituted by the Company at all, nor indeed was any change begun on the job descriptions until after the complaint in the instant action was filed.

As of the date of the filing of the complaint — with the exception of the changes mentioned above — all or prac-

tically all of the discriminatory system and acts of discrimination previously described above with regard to the prior conditions of employment continued unchanged by the Company.

Thus, in February of 1969, Respondent continued to classify jobs on the basis of sex, assigned jobs and promotions on the bisis of sex, continued to pay women on the basis of a lower wage rate than men, only men were assigned to "B" jobs and women were assigned to "A" jobs, no woman had ever been promoted to a "man's job". The job cards continued to be color coded as to male and female. The discriminatory job description point system was still in effect. Women doing "men's" work did not receive higher rates of pay, jobs were still labeled "M" for male and "F" for female.

Thus, despite the changes enumerated above, we conclude and find the prior discriminatory job systems and classifications in force at Veeder Root for a substantial number of years, continued, were maintained in effect, and these practices continued and were reaffirmed from and after both the Federal Equal Pay Act of 1963, the Federal Civil Rights Act of 1964, and the recent 1967 Sex Amendment to the Connecticut Act.

By the continuation of this prior system, by its maintenance in effect and practice, by the reaffirmation of such practices, Respondent has engaged in discrimination and violated section 31-126 (a) of the Connecticut Fair Employment Practices Law and has discriminated against individuals including Hilda Moe in respect to compensation and terms, conditions or privileges of employment on the basis of sex in Department 99.

Job Descriptions:

Respondent makes a strenuous argument that there are

substantial differences in skill, effort and responsibility required to perform the A assembly and B assembly jobs, and as evidence of this points to the job descriptions used by the Company which set forth a point rating system and also describe the job and its functions. Assemblers B rated a total of 405 points and assemblers A rated 280 points.

Yet, we find the job descriptions themselves on their face, and as applied evidence a discriminatory classification system based upon sex. They are coded "M" for male and "F" for female.

Moreover, the point system used to justify higher pay for B assembly work is inconsistent and discriminatory on its face. For example, for the component of "skill", B assemblers (male) are given more points (80) for general high school education than A assemblers (female) (60). In addition, the Tribunal finds, and the Respondent's witnesses admitted there is no difference at all with regard to the "effort" component of the two descriptions. Yet, B assemblers under job descriptions are given more points (25) for walking, bending and climbing stairs than A assemblers (10), notwithstanding the fact that the Tribunal finds, based upon all of the evidence, that the walking, bending and climbing of stairs were virtually identical for men and for women.

Furthermore, and more importantly we find that these job descriptions establish instead that there are no substantial differences between the B (male) assembler and the A (female) assemblers. Indeed, on the basis of the job descriptions in evidence, perhaps it is the A (female) assembelrs who do the more difficult work.

Contrary to Respondent's Brief which asserts that only B assemblers use a "wide variety" of hand tools as compared with A assemblers who only use a "variety" of hand tools, the job description for A assemblers *specifically* calls

for the use of a "wide variety" of hand tools by the A assemblers also. In addition, while the job description sets forth certain machines and tools used by "A" assemblers which are omitted from the "B" assembler description, there are certain tools in the "B" assembler description which also are omitted from the A assembler description. Moreover, the B (male) description required a "normal" mental effort while the A (female) description on its face requires a "large" mental effort.

Furthermore, it is only the A (female) description which specifically sets forth the fact that "locations in many cases are difficult and require finger and tweezer dexterity" where it is only the B (male) assemblers description that states "units assembled are standard types having ordinary tolerances or specifications". Finally, the A job description specifically states that A assembler does assemble "units under the instruction of the . . . male assembler". It should be also noted that when the B assemblers (male) were given the two job descriptions to compare, they all unanimously picked the A assembly (female)) as most nearly indicative of the work they did.

Accordingly, based on the testimony of the witnesses and the job descriptions themselves, we find the job descriptions used by the Company to classify employees into A assembly and B assembly jobs on their face and as applied, evidence the discriminatory system prevailing in Department 99. We find they show that they are no substantial differences between A and B assembly jobs.

Job Transfer into Department 99:

The evidence showed that whenever men employees transferred into Department 99 from other Veeder-Root Departments, they always were assigned the higher paying "B" jobs. No woman was ever promoted to such job.

The Company takes the position that these transfers into Department 99 over the years were on the basis that those transferred employees had overall plant seniority and this justified the Company transferring men employees into higher rated jobs into Department 99 from other parts of the Company over the women employees.

The Company alleged that these transfers were justified because the other employees were "excessed" from other Departments due to lay-offs and accordingly were moved into Department 99 pursuant to the collective bargaining contract. With the exception of Harold Gray, it pointed out 9 different transfers into Department 99, some of which occurred prior to the passage of the Connecticut Law, and some of which occurred after the passage of the Connecticut Law to show that in effect the system operated to allow employees with more plant wide seniority than women and with more ability on the basis of the job record at Veeder Root to come in and take jobs at a higher rate of pay than the women in the department who had already been working there.

The Tribunal, however, on the basis of all of the testimony, evidence, exhibits, and its own observations finds the contrary to be true. We thus find that in a substantial number of instances the Company transferred employees from other departments in the plant with *less* seniority plant wide than the women in Department 99 into Department 99 to a B assembler job at the higher rate of pay when there were job openings. We thus find for example, transfers of male employees who had *less* plant wide seniority and with only two years of assembly experience being promoted into the assembly B jobs over women who had much more plant wide seniority and experience as assemblers (ranging from 4 to 22 years of such experience).

Although the Company says the governing standard under the contract is plant wide seniority, providing the employee has the ability, in fact, the Company violated this case in most instances. The supervisor of Department 99 testified that whenever there was a job open in that Department, he determined whether he could upgrade an individual within the department based upon past experience and past performance of the individual as evidenced on the job record, provided, first the individual had the required seniority. Yet, he never upgraded a single woman to B assembly jobs despite their overall plant seniority. In fact, in one instance although an individual had plant wide seniority, he had *no* prior assembly experience within the company, yet this particular individual was brought into Department 99 into the higher paying B assembly job over the women in that department.

This Tribunal concludes that the Company not only violated the collective bargaining contract, but also that the history of job transfers and placement of individuals in work slots within Department 99 was on the basis of sex. It stretches believability to say that women in the department with four to five times the amount of assembly experience (on the basis of the job records and performance since by the company's own admission this is the controlling factor) could not ever satisfy the performance of the job requirement as compared to men who either had no assembly experience or substantially less experience. There is no evidence the Company ever afforded the women the opportunity to try out for these jobs.

Thus, this Tribunal concludes and finds by a clear preponderance of the evidence that the transfers operated to discriminate against women on the basis of sex.

Differences in Skills:

The Respondent takes the position that the difference

in skill is the critical difference in this case and that based upon the skills that the men are required to perform, it could justify payment of wage differential of 49¢ and 35¢ per hour wage differential between "A" (female) and "B" (male) assemblers.

Respondent is crystal clear in its argument and brief that it does not rely in any manner whatsoever on the "bona fide occupational qualification" exception in the Connecticut Law to sex discrimination. It takes the position that the skill requirement for the performance of the assembler B job is much greater than the skills required for the performance of the assembler A job. Respondent also made it clear it was not arguing that the basic "effort" requirements for the job classifications are any different. Nor does Respondent rely on the proposition that there is a difference in "responsibility" in the job classification.

As to the element of skill, the Equal Pay standard in the Federal Equal Pay Act of 1963 is helpful in determining what constitutes the element of skill. The interpretations there conclude that skill includes consideration of experience, training, education and ability. It must be measured in terms of the performance requirements of the job and even though employees possess a skill not needed to meet requirements of the job, this skill not needed cannot be considered in making a determination regarding equality of skills.

Respondent strenuously contends there is a substantially greater amount or degree of skill required to perform the assembler B jobs.

Respondent listed a number of additional tasks that were required to be performed by the men on their machines. It also took the position that the job of the men involved complete knowledge and complete construction of

a variety of counters, whereas the A assemblers job consisted essentially of the simple assembly from parts in stock of a single series of counters, using simple hand tools.

It argued that only the men used all "of the critical skills of measuring, straightening, adjusting, testing, machining, punching, drilling, and setting up machines".

The Tribunal notes that the Respondent contends there were some 15 basic requirements of the job which were separate skills over and above those required to be used by women. Thus, the Respondent's witnesses testified that only men "sanded a casting, crimped a shaft, straightened a shaft on a V-block, held wheels together while they drive a hole, adjusted a counter base for rock, did any lathe work, did any reaming, did any drill pressing, twisted shutters that held gears, straightened frames, installed clutches for counters, bent linkage to provide greater freedom of movement, used a riveting machine, built a clutch assembly and bent a dimple for a clutch on the counter.

The Tribunal had testimony on each and every counter introduced by Respondent as to how many of these additional skills were used by the men in making the counters. In addition, the Tribunal in taking its view at the premises observed a number of operations relating to these additional tasks.

Thus, the Tribunal observed many of the tools used by both males and females, saw *inter alia*, a sand casting machine with a circular disc, machinery tools, hand cutters, a free standing floor model drill presses, tubular automatic riveters, observed employees filing parts, saw feeler gauges, and the reading of dial indicators, different types of files, air driven presses, graphite bench tumbler machines, a hand arbor-press, free standing kick press operated by using a

foot pedal, soldering operations, electrical contacts, testing of such contacts, observed lathes, buffing wheels and a 5-ton screw press.

In addition, the Tribunal has carefully examined the catalogues which included pictures of the counters assembled by both A and B assemblers, the descriptions contained therein, and each of the counters introduced into evidence by Respondent.

Based upon all of the evidence, the Tribunal concludes that some of the counters built by the men required some of the additional skills enumerated above. However, it is clear from the testimony of the Respondent's witnesses that not all, or nearly all, or even a substantial amount of these additional tasks were required to be used on all of the counters. The tasks vary from machine to machine and counter to counter. The Respondent never attempted, moreover, to show what percentage of the men's time was spent in these additional tasks.

As to the some 15 different specific items which the Respondent claims the men performed, it is clear that not a single counter introduced by Respondent in evidence needed all of these tasks. From the testimony, some of these particular counters assembled by men needed but one or two of these particular additional tasks and a few as many as 8. All of the skills however, might be used collectively by B assemblers (male) over a length or period of time depending on the number of counters they worked with. However, in no instance were all of these additional skills used on any one counter.

Furthermore, there is no evidence at all how these particular tasks required substantially different degrees of skills. Thus, our observations of either some of the machines

which were allegedly used by men only, and the credible testimony offered at the hearing, plus our own examination of the exhibits and counters, give no indication to the Tribunal of the quantity or quality of any extra substantial skills involved.

It should also be noted that the women clearly performed some additional tasks which men did not perform, and for which the women received no additional compensation, such as packing of the counters.

Furthermore, the testimony shows that women did use many of these additional skills as required for counters, although, again, as with the men, not all of them on any particular counter and again, some were not needed at all for some of their counters.

This Tribunal also takes notice of the fact that after the filing of this complaint, women were directed by Respondent not to use some of the additional skills, or use the additional machines which had previously been available for their use, and which had been used by some of them in the past. Thus, some women were directed not to operate the drill presses and not to sand castings.

There is much evidence on this record and testimony by the Commission's witnesses that there was substantial overlap in the counters and the work done by men and women. Thus, although it is true that both sexes did work primarily on certain lines of counters, even if it could be said there was any difference at all or any substantial difference, both men and women at times worked on the same machines and counters as required. We do believe that some counters are more difficult to assemble than others. However, the only counters in evidence introduced by Respondent were one counter out of a number of counters

worked on by Hilda Moe and all of the counters worked on by the men in the department. Respondent did not bring forth a single other counter worked on by the other women. Nor did it bring a single man assembler in to testify.

Women in the Department who actually have been performing assembly work for many years, (some for as many as 30), testified that the jobs of the men were not more difficult. They also testified that a number of them from time to time worked on the same counters the men did and still received the lower pay. Of the 15 different functions that men are supposed to perform, a substantial number of witnesses testified that they too did a substantial number of these tasks, and we find this to be true as to them and as to Hilda Moe. Thus, many women have assembled the same counters as the men, used many of the same skills and indeed have even trained a number of men when they came into the Department. There is nothing in this overall record upon which the Tribunal can say there is evidence to justify a substantial difference in skill.

Especially significant to us is the fact that Respondent did not show that all of the men used all of the skills all of the time. Respondent's witnesses also admitted that not all of the men use these additional skills. Women used many of these skills much of the time although it is not clear from the record how often men or women used these "additional" skills. Furthermore, the Company did not show what the percentage of the time was spent by the men in these additional skills.

Indeed, the Company's witnesses itself admitted that many women use the same type of extra procedures as the men use, but justified the difference on the grounds that in the men's case these extra procedures were more "critical". However, the testimony of the Commission's witnesses, the

overall evidence and exhibits in this case, the Tribunal's observations and indeed the written job description themselves contradict this opinion. The Tribunal finds this not to be true with respect to many of the counters nor of the extra work.

Accordingly, on the basis of the entire record this Tribunal concludes that it has been proven by a clear preponderance of the evidence that there is no substantial difference in the work performed by Hilda Moe as assembler "A" and the other men in the department as assemblers "B". Any difference is an artificial one, and a product of the discriminatory system in effect for so many years continuing unchanged on the basis of sex.

We believe that in this instance all employees classified as "A" and "B" in Department 99 perform duties substantially similar and that the working conditions are substantially the same. On this record, the fact that some of the duties were different or that the men and women used different skills and performed different tasks to make the particular counter they may be working on at the moment is insufficient to show that there was a substantial difference between the jobs.

We have not drawn any conclusions here on the basis of job classifications or title, but have examined the actual job requirements and performance, and have scrutinized the job as a whole over a full work cycle on the basis of the entire record before us.

Whatever differences there are in work performance are not substantial. We conclude that Respondent has artificially created job classifications over the years, and has maintained these artificial distinctions on the basis of sex. We find as a fact that the pay differential was based upon sex, and find that the jobs are not so unequal as to justify

the gross differential in wages in this case. We conclude on this record that any differences in skill or effort required, were inconsequential. (See *Schultz* v. *Wheaton Glass Company*, 421 F.2d 259 (3rd Cir., 1970) involving a construction of the Federal Equal Pay act of 1963).

By all of the above, Respondent has discriminated against Hilda Moe in violation of Section 31-126 (a) of The Connecticut General Statutes.

Hilda Moe has always worked under the discriminatory classification and job system set forth in our discussion above and for that reason alone, this Tribunal finds discrimination practiced against her by Respondent on the basis of sex.

Moreover, the record is replete with instances of how the entire job system actually worked to Miss Moe's disadvantage. She has trained a number of men that came to work in the department who received the higher "man's" rate, while she continued to be paid at the lower "woman's" rates. She also worked in many instances on a number of machines and counters which were thereafter assigned to men, notwithstanding the fact that she had and did make use of a substantial number of the very skills deemed by Respondent to be so critical as to justify the gross disparity in wage rate. A number of men came into the department with less seniority and experience than her and were promoted and transferred into higher paying jobs. Respondent's witnesses admitted that the job prior to the time she took it over in Department 99 was a man's job at the man's rate. When she worked on the men's counters, she was paid at the lower "women's" rate. She was classified for her job on the basis of sex and by the discriminatory job description.

Furthermore, Hilda Moe — and for that matter, the rest of the women in the deparment — have used, and still

use a number of the skills and perform a number of the tasks Respondent claimed to justify the higher rate for men. We conclude there is not such a skill differential in this department so as to justify the disparity in wage rates.

Finally, we conclude that even if it is possible to find that such wage differential was substantial and critical — and we find to the contrary — this Tribunal still finds that discrimination has been practiced against Hilda Moe because of the Company's continued operation of the discriminatory system set forth above. Even if it could be said the wage disparity was on the basis of substantial difference in skill, the entire discriminatory system so permeated the Veeder Root Department 99 and was so pervasive that we conclude such discrimination does exist and has been proven.

Good Faith:

This Tribunal finds Respondent's argument that it attempted in good faith to comply with the law irrelevant.

There is nothing in the Connecticut Statute which will warrant the finding that where an Employer has otherwise violated the Section 31-126 (a) that its good faith in attempting to comply with the Statute will warrant the finding that no act of discrimination exists.

The Connecticut Law contains no such "good faith" requirement. It should be noted that although other laws, such as the Federal Equal Pay Act and the Federal Wage and Hour Laws, do provide that where the law is uncertain and where the Respondent has attempted to comply in good faith, in certain limited circumstances there will be no such violation. However, such requirements only apply to the specific Federal Acts and no such requirement exists in the Connecticut Act.

Moreover, the Tribunal finds that even if it could be said that we should consider Respondent's good faith in attempting to comply with the law, on the entire record in this case we find no such good faith. Respondents admitted the discriminatory system, and admitted its systems operated to discriminate against women on the basis of sex. Even after the passage of the Federal Act of 1963, Equal Pay, the Federal Civil Rights Act of 1964, the discriminatory system continued virtually unchanged. Although there were some artificial changes, Respondent in effect continued and reaffirmed the discriminatory system. Respondent's witnesses themselves testified that persons in the plant still refer to and characterize the jobs as female and male, this includes workers at the working level and at the management level. This system continued despite the passage of a number of relevant laws that have been on the books for many years. Whatever changes came were too little and too late. On this entire record therefore, this Tribunal finds no requisite good faith to comply with the law in this case.

The Remedy:

Consideration of pre-Act conduct serves to illuminate the purpose and effects of the present policies in force at Veeder Root especially where the policies which Respondent now claims to be neutral or have a substantial business purpose are found to be based upon a pattern or practice of pervasive discrimination. Post-Act conduct cannot be properly evaluated in a vacuum, and a full understanding of Post-Act conduct has been reached after considering the circumstances in which it has taken place. In short, the prior acts and system of Respondent with regard to employment practices are relevant and material in determining whether present practices are illegal or tend to perpetuate past discriminatory practices.

In this case, the admissions of Respondent with regard to its adopted system of discrimination, which system carried forward the incidents of discrimination, is strong evidence of on-going and continuing discrimination. Here the record is replete with facts from which the discriminatory practices can be inferred. The conduct of Respondent including its failure to take steps to discourage such discriminatory policy and its acquiesence in an historical and traditional discriminatory policy belies its contention now that such policy no longer exists or that it is now based upon proper business considerations.

Moreover, on the basis of the entire record, independently of any pre-Act conduct we find the discriminatory system exists.

In carrying out responsibility under all the circumstances of this case and on the basis of the record, this Tribunal does have the power to order Respondent to cease and desist from continuing the practices that were in effect and to take such affirmative action as may be appropriate to remove the consequences of the discrimination practiced in this case and to effectuate the policies of the Act.

In granting such relief, however, the Tribunal must not be unmindful of the equities so as to render the proposed relief inappropriate under this particular facts of the case, and accordingly, has given due consideration to the equities herein. Any action or orders must also cure the present effects of the discriminatory policies applied against Hilda Moe.

Because of our findings herein, this Tribunal believes that the employee should be reimbursed for wages lost because of the discrimination practiced in this particular case. We believe such an order remedies the consequences of the

discriminatory practice in effect against Hilda Moe and puts her in the same position she would have been but for the forbidden discrimination. Such an order is remedial only as to Hilda Moe.

ORDER

The Tribunal hereby ORDERS Respondent to:

1. CEASE and DESIST from maintaining the discriminatory job and classification system in effect at Veeder Root in Department 99 and REMOVE all of the consequences of its discriminatory acts including but not limited to abolishing any distinction between the classification of assembler A and assembler B, or any successor classification, abolishing the job description system, the color coding system or any other system that classifies assemblers on the basis of sex, in Department 99.

2. CEASE and DESIST from discriminatorily applying any discriminatory job classification system to Complainant Hilda Moe.

3. CEASE and DESIST from paying Hilda Moe as an A assembler less than the B assembler rate. We order this even though from the testimony on record, the assemblers have now been classified differently under the new proposed collective bargaining contract. It is our ORDER that notwithstanding any new classifications, as long as the work is substantially the same, the pay shall be the same.

4. Pay Hilda Moe the same wages she would have received but for the discrimination practiced against her. This means that Complainant must receive the difference between the A assembler rate and the B assembler rate since October 1, 1967, the effective date of the Amendment, and we find

that such difference from October 1, 1967 to July 31, 1970 is $2,583.84 in gross wages. The actual computation of the amount of money owing from and after July 31, 1970 to and including the date of any payment to Hilda Moe is reserved for computation between Commission counsel and Counsel for Respondent. If no agreement can be reached, Respondent or Complainant may request additional hearings by this Tribunal solely to take additional testimony on that particular fact.

HEARING TRIBUNAL

EMANUEL N. PSARAKIS, *Chairman*
MATTHEW SHAFNER
G. LEON SILVERMAN

May 18, 1971

APPENDIX B

SUMMARY OF TESTIMONY OF HILDA G. MOE

BEFORE THE HEARING TRIBUNAL

HILDA G. MOE, the complainant before the defendant Commission, testified on matters bearing on the issues of this appeal as follows:

1. She has been employed continuously by the plaintiff since January 4, 1949. (T. 11).

2. She has worked in Department 99 of the plaintiff's factory located at 28 Sergeant Street, Hartford, Connecticut, since October 30, 1959. (T. 11, 12).

3. Since that time her primary duty has been the assembly of counters. (T. 12).

4. Fourteen (14) women and seven (7) men assemble counters in Department 99. (T. 15).

5. At the time of the filing of the complaint all of the women assemblers, including herself, were classified and paid as Assemblers A as such job is described in Commission Exhibit 7. (T. 15; Appendix L).

6. She has built predominately all models of the visicounter. (T. 12).

7. The assembly of visicounter involves the reading of blueprints, gear ration charts, order forms and bills of material. (T. 13, 672).

8. In her job she must use a hammer, a rubber mallet, a rawhide mallet, various screwdrivers, three kinds of pliers,

tweezers, punches, reamers, brushes, knives, files, carborundum stones, gauges and pliers. (T. 14, 674).

9. In the performance of her aforesaid job, she has also used drill presses, arbor presses, a Hobbing machine, soldering iron and continuity box. (T. 14-15, 674).

10. In the performance of her job she has performed, *inter alia*, the following operations alleged by the plantiff to be esoteric to the Assembler B classification: building up a wheel; straightening a shaft on a V-Bar; adjusting the base of a counter for rocking; crimping a shaft; using dial indicators for straightening shafts, and drilling couplings. (T. 682-685; 688).

11. Between 1959 and 1961 she was taught to assemble visicounters by one Rocco Armento who was, at all times pertinent hereto, an Assembler B. (T. 19, 676). During that time Rocco Armento devoted at least seven months exclusively to assembling visicounters. (T. 677).

12. Thereafter and until the present, she has assembled visicounters without supervision. (T. 21).

13. She has taught, without additional compensation, Assemblers B, Joseph Shea and John Halotek, the assembly of the visicounter. (T. 21, 695).

14. John Halotek and Joseph Shea and other Assemblers B were prohibited from assembling visicounters after she filed her complaint with the Human Rights Commission. (T. 695).

15. Her counter is more difficult to assemble than the counter which Joseph Shea, an Assembler B, assembles. (T. 17).

16. In addition to various models of the visicounter, she has assembled the following counters:

a.	1391	(T. 678; Resp. Exh. F)[1]
b.	1451	(T. 678; Resp. Exh. F-1)
c.	1503	(T. 679; Resp. Exh. F-5)
d.	1539	(T. 679; Resp. Exh. F-6)
e.	1501	(T. 688; Resp. Exh. F-7)
f.	1489	(T. 681; Resp. Exh. F-8)
g.	1525	(T. 681; Resp. Exh. F-16)
h.	1014	(T. 681; Resp. Exh. F-23)
i.	1164	(T. 682; Resp. Exh. F-24)

17. She did not receive pay of Assembler B classification or any additional compensation when she constructed these counters. (T. 689).

18. In July, 1965, she complained to her departmental supervisor about the unequal pay as between male and female assemblers in Department 99. (T. 18). Her complaint was summarily rejected. *Id.*

19. In 1965 she complained to her union steward about the aforesaid pay differential. (T. 46).

20. Although the union steward admitted the validity of her complaint, he failed to pursue same. (T. 46).

21. Prior to filing the complaint in the instant case, she filed a complaint regarding the aforesaid subject matter with the Equal Employment Opportunity Commission (EEOC) in Washington, D.C., a federal agency. (T. 47).

22. Subsequently, the EEOC instructed her to file her complaint with its New York City office, which in turn advised her that such a complaint must be filed with the defendant. (T. 47).

APPENDIX C

EXCERPTS FROM PETITIONER'S BRIEFS

BEFORE THE SUPREME COURT OF CONNECTICUT

"Even if the complaint were of a more individualized nature, the Tribunal had not only the authority to grant the relief it did in paragraph 1, but the duty to do so." (page 9)

"The defendant submits that presented with this situation of department-wide discrimination the Tribunal would have abrogated its statutory responsibility under Sec. 31-127 and the Fourteenth Amendment if it merely granted individualized relief to Hilda Moe and ignored the overall problem, thereby allowing the plaintiff to perpetuate its illegal system. The Commission maintains that the lower court neglected its own constitutional responsibilities under the Fourteenth Amendment of the United States Constitution." (page 14)

"Secondly, since at least 1965, Hilda Moe has been attempting to obtain redress for her grievance. In July, 1965, she complained to her departmental supervisor on the basis of Title VII of the Federal Civil Rights Act of 1964 about unequal pay and improper classification between men and women in Department 99; her protest was dismissed out of hand. (Appendix C, par. 18). Also in 1965 she complained to her union steward who after admitting that the differential in pay was unjustified, but contrary to his promises, failed to pursue the matter. *Id.*, at par. 19-20. In January, 1969, she took up the matter in vain with her department manager. (R. 8). Meanwhile, Miss Moe filed a complaint with the Equal Employment Opportunity Commission in Washington, D.C., which subsequently instructed her to file same with their New York City divisional office. (R. 21;

Appendix C, par. 21). Whereupon, she was told that the matter would have to be handled by the defendant Commission. (Appendix C, par. 22)." (pages 27-28)

"Such a conclusion is imperative when, as here, the General Assembly has specifically declared equal protection and treatment under the law to be the public policy of the State. The failure of the Superior Court to rule on the Title VII rights of the complainant did not excuse its obligation to protect Fourteenth Amendment rights." (Reply Brief, page 3)

APPENDIX D

NO. 171022

VEEDER-ROOT COMPANY	SUPERIOR COURT
v.	HARTFORD COUNTY
COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES	APRIL 17, 1972

MEMORANDUM OF DECISION

On February 26, 1969, Hilda G. Moe, an employee of the plaintiff, filed a complaint with the defendant stating that ". . . I feel I am being discriminated against because of my sex (female)." On December 19, 1969, following an investigator's report that there was reasonable ground for the complaint, the defendant notified the plaintiff to appear for a hearing on the complaint on January 20, 1970. On December 30, 1969 the plaintiff filed an answer denying any violation of § 31-126 (a) of Chapter 563 of the General Statutes. At intervals between January 20, 1970 and December 1, 1970 a hearing was held before a hearing tribunal of three members appointed by the defendant's chairman. On May 18, 1971 the hearing tribunal filed its decision and order. The hearing tribunal ordered the plaintiff (1) to cease and desist from maintaining the discriminatory job and classification system in effect in its Department 99, remove all of the consequences of its discriminatory acts including but not limited to abolishing any distinction between the classification of assembler A and assembler B, or any successor classification, and abolishing the job description system, the color coding system or any other system that classifies assemblers on the basis of sex in Department 99; (2) to cease and desist from

discriminatorily applying any discriminatory job and classification to complainant Hilda Moe; (3) to cease and desist from paying Hilda Moe as an A assembler less than the B assembler rate as long as the work is substantially the same and not withstanding any new job classification under a new collective bargaining contract; and (4) to pay Hilda Moe the difference between the A assembler and the B assembler pay rate from October 1, 1967 to and including the date of payment.

On May 28, 1971 the plaintiff took the present appeal to the Superior Court from the hearing tribunal's order. On July 29, 1971 the defendant filed an answer and a counterclaim requesting an order of the Superior Court enforcing compliance with the order of the tribunal. On August 31, 1971 the defendant certified the record before it to the court, and, on October 5, 1971, the issues on the appeal were closed by the filing of the plaintiff's answer to the defendant's counterclaim.

On December 15, 1971 the parties stipulated in writing that the appeal be referred to the undersigned "to hear the facts and make a report to the court" and the court referred the case for that purpose on the same date. Because the statute, § 31-128, requires that the issues presented be decided upon the record certified by the defendant including the 752 pages of transcript and the numerous exhibits, I assigned the case for argument on January 13, 1972 and suggested to counsel a correction of the order of reference. A time interval until February 25, 1972 was fixed for filing briefs, and on March 10, 1972 an order of reference was issued by the court on stipulation of the parties directing me "to hear the evidence, report the facts to this court and enter judgment herein."

The grounds of appeal advanced by the plaintiff are that the order of the hearing tribunal:

(1) Violates the Fourteenth Amendment to the Constitution of the United States and Section 8 of Article First of the Constitution of Connecticut because

(a) neither the defendant nor the hearing tribunal had authority to issue the order;

(b) the order was not issued by the defendant and was issued without a hearing by the defendant; and

(c) the order makes an award which is retroactive to October 1, 1967 and antedates the Hilda Moe complaint;

(2) Violates Article Second of the Constitution of Connecticut because

(a) the order emanates from a tribunal, the creation of which, by the defendant, constituted an unlawful vesting of legislative power in the defendant as an administrative agency of the executive department; and

(b) the order emanated from the hearing tribunal, the creation of which constituted an unlawful vesting of judicial power in an administrative agency of the executive department;

(3) Was issued illegally because

(a) neither the defendant nor the hearing tribunal could substitute its judgment for that of the parties to a collective bargaining agreement as to job classification and rates of pay because Federal law has preempted the field of collective bargaining in labor relations and allied areas of the law;

(b) it was beyond the powers vested in the defendant "or any investigators designated by it" by § 31-125 of the General Statutes;

(4) Was arbitrary and capricious because

(a) it exceeds the scope of the complaint and the relief sought by Hilda Moe;

(b) it fails to recognize Hilda Moe's refusal to accept promotion to assembler B;

(c) it fails to consider Hilda Moe's failure to utilize adequate union contract negotiation and grievance remedies;

(d) it attempts to regulate the plaintiff's internal employment practices;

(e) no actual case or controversy exists;

(f) it attempts to afford relief to an entire class of employees who are not parties and who had no notice;

(g) it draws improper inferences from the plaintiff's production or failure to produce evidence or witnesses;

(5) Was not based on substantial, credible or admissible evidence that

(a) contract negotiations and grievance procedures would not have afforded the remedy sought by Hilda Moe;

(b) the alleged discriminatory policies existed on and after October 1, 1967;

(c) there was no substantial difference between the jobs of assemblers A and B;

(d) the plaintiff's attempt to comply with the law in good faith was irrelevant, and

(e) the plaintiff did not in good faith comply with the

Federal Equal Pay Act of 1963 or Civil Rights Act of 1964, or with § 31-126 of the General Statutes.

In an effort to contain this memorandum within some reasonable bounds the plethora of grounds of appeal will be referred to by their foregoing numerical designation. The constitutional issues raised by the first five reasons of appeal, namely Number (1) and Number (2), are considered first.

The constitutionality of a legislative act must be assessed "from the standpoint of upholding the legislation as a valid enactment unless there is no reasonable ground upon which it can be sustained" and "[t]he burden of proving unconstitutionality rests on the plaintiff." *Roan* v. *Connecticut Industrial Building Commission*, 150 Conn. 333, 338, 189 A.2d 399; *Adams v. Rubinow*, 157 Conn. 150, 152, 251, A.2d 49. Another basic proposition is that an administrative agency created by the General Assembly must act strictly "within its statutory authority, within constitutional limitations, and in a lawful manner." *Southern New England Telephone Co.* v. *Public Utilities Commission*, 144 Conn. 516, 523, 134 A.2d 351.

The applicable statutory authority in this case is Chapter 563, §§ 31-122 to 31-128 inclusive, of the General Statutes entitled Fair Employment Practices. By virtue of that chapter, as it has undergone amendment, the General Assembly has created a Commission on Human Rights and Opportunities, the members of which are appointed by the Governor and which is directed, among other things, to "investigate and proceed in, as provided in sections 31-124 to 31-128, inclusive, all cases of discrimination in employment because of . . . sex . . ." § 31-123. The Governor also appoints hearing examiners, § 31-124. The commission is empowered, among other things, ". . . to receive, initiate, investigate and mediate complaints of unfair employment

practices and "by itself or with or by hearing examiners, to hold hearings . . ." § 31-125 (e) and (f). It is an unfair employment practice "for an employer . . . except in the case of a bona fide occupational qualification or need, because of the . . . sex . . . of any individual . . . to discriminate against him in compensation or in terms, conditions or privileges of employment." § 31-126(a). Any person claiming to be aggrieved by an unfair employment practice may file a written complaint under oath with the commission which the chairman of the commission is required to refer to a commissioner or investigator who must endeavor, if he finds reasonable ground for the complaint, to eliminate it by conference, conciliation or persuasion. If the effort is unsuccessful the complaint and results of the investigation must be certified to the chairman of the commission and the Attorney General. *Scovill Mfg. Co. v. Commission on Civil Rights*, 153 Conn. 170, 173, 215 A.2d 130. The chairman of the commission must then appoint a hearing tribunal made up of three commissioners or a panel of hearing examiners. (The amendment made to this last procedure by 1971 Public Act No. 547 does not affect the present case.) The chairman, in the name of the commission, thereupon causes notice of a hearing before the tribunal to be issued and the commission becomes the party supporting the complaint. An answer may be filed by the respondent, and testimony is under oath and transcribed at the request of a party. If the tribunal finds the complaint established it must state its findings of fact, and issue, file with the commission and serve on the respondent its order, or dismiss the complaint if it is not established. § 31-127. Neither the commission nor the hearing tribunal is empowered to enforce any order made. Enforcement is by the court, on the record filed with it, in such form as the court determines that justice requires enforcement, modification or dismissal of the order of the hearing tribunal. § 31-128. For some strange reason § 31-128(a) authorizes the commission to apply to "the court" for enforcement without

identifying the court, but provides, § 31-128(d), that an aggrieved respondent may appeal to the Superior Court. As a court of general jurisdiction, however, the Superior Court would be the forum for an application for enforcement under the language of § 31-128(a) since no other court has been given exclusive jurisdiction. *LaBella* v. *LaBella*, 134 Conn. 312, 316, 57 A.2d 627. It is noted in passing that, while section 89 of 1971 Public Act No. 870 amended sub-section (d) of § 31-128 to provide that appeals be taken to the Court of Common Pleas, it made no amendment to sub-section (a) relating to applications for enforcement. By its own terms, however, the amendment has no application here. 1971 Public Act No. 870, § 131.

The procedure laid down in the chapter is explicit, it was followed in this case, and it does not run afoul of the constitutional attack made in Numbers (1) a and b and Number (2) of the grounds of appeal. So far as material here, Chapter 563 makes the commission an administrative body to investigate specified unfair employment practices. When preliminary investigation has disclosed a reasonable ground for complaint, which conciliation has been unable to resolve, the matter proceeds to a hearing upon due notice. At the hearing the commission becomes the party in support of the complaint and the adversary party is the one against whom complaint is made. *Draper* v. *Clark Dairy Inc.*, 17 Conn. Sup. 93. A full hearing with representation by counsel, testimony under oath, subpoena power, immunity of witnesses, and right of appeal is provided for before the hearing tribunal which must make a finding of fact and is empowered to issue an order, the enforcement, modification or dismissal of which rests with the court. Chapter 563 is not unconstitutional for any of the reasons stated in Number (1) a and b and Number (2) of the grounds of appeal. The procedure is entirely governed by statute and thus differs from cases such as *State* v. *Stoddard*, 126 Conn. 623, 13 A.2d 586; *Sco-*

vill Mfg. Co. v. *Commission on Civil Rights*, supra. The requirements of due process are fully met. *State* v. *Griffiths*, 152 Conn. 48, 57, 203 A.2d 144; *Romanov* v. *Dental Commission*, 142 Conn. 44, 52, 111 A.2d 9.

In Number (1) c of the reasons of appeal the plaintiff complains because the salary award to Hilda Moe is retroactive to October 1, 1967 and antedates the date of her complaint. The tribunal did assume to award her supplemental pay as above recited from October 1, 1967, the date on which discrimination because of sex became an unfair employment practice by statutory amendment. Section 31-127, however, provides that any complaint filed thereunder, as was the present complaint, must be filed "within ninety days after the alleged act of discrimination." The phraseology of the complaint in this case could be read to mean that Hilda Moe had been protesting to her employer that she was discriminated against because of her sex since 1965. If this construction were given to the complaint and the "act of discrimination" was then treated as having occurred on October 1, 1967 when the amendment to the statute became effective then the complaint made in February 1969 would be utterly invalid as a basis for any action by the commission. *Scovill Mfg. Co.* v. *Commission on Civil Rights*, supra, 175. No issue is made of the timeliness of the complaint, however. The parties have apparently treated a conversation which took place on January 22, 1969 as the "act of discrimination" which precipitated the complaint, an event well within the ninety day limitation provided by § 31-127. Assuming, as the parties have, that the complaint was timely, therefore, it was error for the tribunal to order supplemental pay from October 1, 1967. The clear import of § 31-127 is to furnish redress for an "act of discrimination" which has been complained of within ninety days of the date on which it is alleged to have occurred. The measure of that redress should be analogous to that available to one unlawfully discharged

from employment. Assuming, therefore, as the parties seem to have done, that the "act of discrimination" in this case occurred on January 22, 1969, any award of supplemental pay to Hilda Moe should be computed from that date. *Safford* v. *Morris Metal Products Co.*, 97 Conn. 650, 656, 118 A.37.

For an understanding and solution of the remaining fourteen reasons of appeal more specifically enumerated in Numbers 3 (a) and (b); 4 (a) (b) (c) (d) (e) (f) and (g); and 5 (a) (b) (c) (d) and (e) a further recital of facts is necessary.

The Veeder-Root Company, an operating division of Veeder Industries, Inc., manufactures at its Hartford factory some 400 types of counters. In 1959 it reactivated what is known as Department 99 to provide sample orders of particular counters with service on them to customers and service to other departments of the factory. More recently the work has been expanded to the manufacture of assembly orders for non-production counters and parts. There are three job classifications in the department in ascending order, namely Assembler A, B, and A prime. The present case is concerned only with classifications A and B. The job description of Assembler A requires a good knowledge of counter mechanisms, the complete assembly of a specific line or type of counters from parts and assemblies, the operator must obtain a blueprint to check component part numbers and specifications, and he must use a variety of hand tools such as mallets, hammers, punches, picks, tweezers, pliers, etc. The job description for Assembler B requires a general knowledge of counters, the complete assembly of a variety of standard counters, operator must be able to read blueprints as a whole, he must use a wide variety of hand tools including hand reamers, hand facing tools and files in addition to those used by Assembler A and must operate a

drill press, bench grinder, riveting or stamping machine and foot press, and he must be able to select and try parts, fit, adjust and align to proper function, reset, and figure alignment and function.

Fourteen women are employed in the Assembler A classification. Seven men are employed in the Assembler B classification. Assemblers A and B work side by side and occasionally assist one another. Assemblers B generally assemble various types of counters while Hilda Moe works on a single type. In November 1969 Assembler A pay was raised from $2.215 to $2.565 per hour and Assembler B pay was raised from $2.699 to $2.899 per hour. The larger pay rates have remained constant since.

Hilda Moe has been employed by the plaintiff continuously since January 4, 1949. Since October 30, 1959 she has been an Assembler A in Department 99, Hilda Moe's job is to assemble what is known as a visi-counter using the tools described in the Assembler A job classification.

Prior to the hearing in this case no female had ever been classified as an Assembler B and no male had ever been classified as an Assembler A. Since Department 99 was reconstituted in 1959 the Assembler A and B jobs have been designated as female and male jobs respectively. Hilda Moe and other females classified as Assembler A have exhibited the capability to do work commonly assigned to and done by males classified as Assembler B. Males have been transferred from other jobs in the factory to Assembler B jobs in Department 99 when females with greater seniority and/or assembly experience were not advised of, or advanced to, the opening.

Local 34, District 26 of the International Association of Machinists AFL-CIO is the bargaining agent for the plaintiff's hourly-rated employees. Included in the bargaining

agreement is the provision "4.3.1 The question of whether or not an employee has been appropriately classified in a particular labor grade shall be subject to the grievance procedure and arbitration." The plaintiff claims that, because of the quoted portion of the bargaining agreement between the union and the plaintiff, the order of the tribunal as illegal because it encroaches on a collective bargaining field which has been preempted by federal law. (Number 3(a).) Whether preemption has occurred must be tested by the facts of the case in issue. *Connecticut Television Inc.* v. *Public Utilities Commission*, 159 Conn. 317, 337, 269 A.2d 276. When the action taken by the state is arguably within the compass of the Federal Act the state's action is displaced. *San Diego Building Trades Council* v. *Garmon*, 359 U.S. 236, 246, 79 S. Ct. 773, 3 L. Ed. 2d 775. But the pre-emption doctrine has never been rigidly applied. *Vaca* v. *Sipes*, 386 U.S. 171, 179, 87 S. Ct. 903, 17 L. Ed. 2d 842. By the terms of 42 U.S.C.A. § 2000e5, which lays down a procedure for complaint against an unfair labor practice strikingly similar to Connecticut's, subsection (b) provides that if a state has a law prohibiting the practice complained of then no Federal charge shall be filed with the Equal Employment Opportunity Commission until sixty days after proceedings have been started under state law. The uncontradicted testimony of Hilda Moe was that she complained to the E.E.O.C. of the same subject matter before filing the complaint now in issue and was told by that agency to complain to the defendant. The reason for that advice does not appear but the statute referred to may supply the answer.

Beyond that "the question of whether or not an employee has been appropriately classified in a particular labor grade" would seem clearly to concern itself with a classification based on ability or skills which is not involved in this case. The issue here is not whether Hilda had the ability or skill to do Assembler B work. The issue is whether she

was placed in the Assembler A class solely because of her sex. It would appear to be an unwarranted extension of meaning to hold that the language used in the bargaining agreement embraced discrimination because of sex. Moreover, if the language were construed to embrace discrimination because of sex the question would arise as to whether it was valid as against public policy. *Beit* v. *Beit*, 135 Conn. 195, 198, 63 A.2d 16; *General Motors Corporation* v. *Mulquin*, 134 Conn. 118, 132, 55 A.2d 732.

The order cannot be held to be illegal for the reason claimed in Number 3 (a) of the reasons of appeal.

The remaining grounds of appeal, namely Numbers 3 (b), 4 (a) (b) (c) (d) (e) (f) and (g), and 5 (a) (b) (c) (d) and (e), turn essentially on whether they are valid attacks upon the conclusions of the hearing tribunal within the ambit of Chapter 563 based upon the facts found by it to the extent that those facts find sufficient support in the evidence. The issues must be decided on the findings of fact made by the tribunal and the evidence certified by it to the court. § 31-128. The findings of the tribunal as to the facts are conclusive if they are supported by substantial and competent evidence. *Draper v. Clark Dairy Inc.*, 17 Conn. Sup. 93, 95.

In determining the validity of the complaint made by Hilda Moe the hearing tribunal was faced primarily with the question of the plaintiff's intent. Did the plaintiff intend to employ her as an Assembler A at a lower rate of pay than an Assembler B merely because she was a female? The tribunal's conclusion on that subject must be supported by substantial evidence, that is, something more than a mere scintilla of evidence or evidence which merely created the suspicion of the existence of that intent. *Board of Education* v. *Commission on Civil Rights*, 153 Conn. 652, 661, 220 A.2d 278, and cases cited. To that end the tribunal was entitled

to draw reasonable inferences, that is to say, inferences drawn from evidence which, fairly and impartially considered, was likely to induce in the minds of men of ordinary intelligence, attentively considering it and using common sense logic, a reasonable belief that it was more probable than otherwise that the fact in issue was true. The question of intent is a question of fact which may be inferred from the proof of facts and circumstances connected with the subject in issue. *International Brotherhood* v. *Commission on Civil Rights*, 140 Conn. 537, 543, 102 A.2d 366.

The hearing tribunal made a lengthy finding of facts which included not only those recited above but others determined from the testimony at the hearing, the exhibits and the tribunal personal observation of the actual operations performed at the factory by Assemblers A and B in Department 99. It concluded that there was no substantial difference between the two job classifications, that the pay differential between them was based on sex and that there was a violation of § 31-126 (a).

Study of the record certified to the court satisfies me that the tribunal's factual conclusion that Hilda Moe was discriminated against because of her sex, giving due weight to such reasonable inferences as it was entitled to draw, was supported by substantial evidence. The question is not whether the court would reach that conclusion, but whether the tribunal could, on the evidence presented, fairly reach that conclusion. *International Brotherhood* v. *Commission on Civil Rights*, supra, 544; *Desmarais* v. *Pinto*, 147 Conn. 109, 111, 157 A.2d 596.

We come then to the form of the order which, in the exercise of the powers of the Superior Court, § 52-434a, may be enforced as requested by the defendant or may be modified and enforced as modified or set aside in whole or in

part. § 31-128. The substance of the tribunal's order has already been stated and, in the interest of space, is not repeated. In sum, it assumes to exercise its statutory authority broadly and purports to treat the complaint before it as a class action involving all employees, not only Assemblers A and B, but also Assemblers A prime, in Department 99 and to dictate the plaintiff's employment procedures in the entire department.

The plaintiff claims that the tribunal's order is illegal because it goes beyond the powers vested in it by statute (Number 3(b)) and that it was arbitrary and capricious because it exceeds the scope of the complaint and the relief sought, attempts to regulate the plaintiff's internal employment practices, and to afford relief to an entire class of employees who are not parties to and had no notice of the proceedings. (Number 4 (a) (d) and (f))

In reviewing the action of an administrative body, the court may, when the issue is properly raised as it is in this case, grant relief if it concludes that the action appealed from is so unreasonable or inexpedient or against sound policy as to make its action an abuse of its powers. *Andover's Appeal*, 113 Conn. 494, 502-503, 155 A. 717.

Hilda Moe's complaint alleged that on January 22, 1969 she had asked her department manager "why women assemblers in my department were doing the same jobs as the men assemblers — yet, the women were only receiving $2.21/hr. while the men received $2.69/hr. . . . I do not feel the men are doing any different work than the women are. . . . I feel I am being discriminated against because of my sex (female)." The clear import of the complaint was that she, as one of the women in the department, was, without any bona fide occupational qualification or need, being discriminated against in compensation because of her sex. § 31-126(a).

The complaint could not properly be construed as an attempt to represent, or to speak for, the other women in the department as a class. If the commission had wished to treat the complaint as a springboard for a class action it could have made its own complaint on behalf of all women in the department. § 31-127; see § 52-105. It did not do so, however, but elected to prosecute the individual complaint of Hilda Moe before the tribunal.

In arriving at the nature and scope of its order the hearing tribunal has stated "[w]e believe that the complaint may properly encompass any such discrimination *like or reasonably related to* the allegations growing out of the charge." (emphasis added)

There is authority for treating a complaint by a single employee as a class action. *Bowe* v. *Colgate-Palmolive Co.*, 416 F.2d 715, (7th Cir.). The doctrine of that case constitutes a radical and unsound departure, however, from the concept of the due process of law which has long obtained in Connecticut. "It is the settled rule of this jurisdiction, if indeed it may not be safely called an established principle of general jurisprudence, that no court will proceed to the adjudication of a matter involving conflicting rights and interests, until all persons directly concerned in the event have been actually or constructively notified of the pendency of the proceeding, and given reasonable opportunity to appear and be heard. This firmly fixed limitation, which, in effect if not technically in all cases, is a jurisdictional one, is as binding in English practice as it is with us. It is a principle safe from the reach of attack by remedial legislation because of its sound constitutional basis." *Ackerman* v. *Union & New Haven Trust Co.*, 91 Conn. 500, 508, 100 A. 22. That principle has been voiced by our courts time and time again in declaratory judgment actions in which the principle is fortified by rule of court, *Benz* v. *Walker*, 154 Conn. 74, 77, 221 A.2d 841;

Manafort Bros., Inc. v. *Kerrigan*, 154 Conn. 112, 114, 222 A.2d 218; *Deforest & Hotchkiss Co.* v. *Planning & Zoning Commission*, 152 Conn. 262, 270, 205 A.2d 774; in (mandamus) *State ex rel. Guglielmo* v. *Bergin*, 149 Conn. 631, 640, 183 A.2d 607; (injunction) *Corsino* v. *Grover*, 148 Conn. 299, 309, 170 A.2d 267; (partnership) *Weidlich* v. *Weidlich*, 147 Conn. 160, 166, 157 A.2d 910; and (zoning) *Shulman* v. *Zoning Board of Appeals*, 143 Conn. 182, 183, 120 A.2d 550; to mention only a few. The rule has been relaxed only in such cases as could be decided between the appearing parties on a record from which the court could determine that nonappearing parties would suffer no injury from the decision. *Dennen* v. *Searle*, 149 Conn. 126, 130, 176 A.2d 561; *Willis* v. *Keenan*, 144 Conn. 33, 54-55, 127 A.2d 56; *Hartford-Connecticut Trust Co.* v. *Gowdy*, 141 Conn. 546, 557, 107 A.2d 409; *Auchincloss* v. *City Bank Farmers Trust Co.*, 136 Conn. 266, 273, 70 A.2d 105; *Russell* v. *Hartley*, 83 Conn. 654, 665, 78 A. 320.

The tribunal's order (1) is in part that the plaintiff cease and desist "from maintaining the discriminatory job and classification system in effect" in Department 99, and remove "all of the consequences of its discriminatory acts." This last includes but is not limited to "abolishing any distinction between *the classification* of Assembler A and Assembler B *or any successor classification*." (emphasis added) The tribunal nowhere indicates, nor does the record disclose, what "*all of the consequences*" (emphasis added) of the discriminatory acts may be or are considered by the tribunal to be. It assumes to order not only the complete abolition of any distinction whatever between Assemblers A and B but also any such distinction involving "any successor classification" the nature of which cannot now be known. The plain meaning of this seems to be that there can be but two job classifications in Department 99, namely, one to replace the Assembler A and Assembler B classifications, and another which is

now known as Assembler A prime. Obviously the order affects not only every employee in Department 99 but also the labor union which negotiates for and agrees upon job classifications with the plaintiff. There is nothing in this record from which to determine the effect of this portion of the order on the employees in Department 99, including Assemblers A prime, or on the union. Whether "all of the consequences" of acts of discrimination because of sex could be removed without affecting all or some of the employees, including Assemblers A prime nowhere appears. The elimination of the distinction between the classification of Assembler A and Assembler B could, under the language of the order, permissibly be accomplished by classifying Assemblers B as Assemblers A. The order does not dictate the reverse procedure. Quite obviously the order affects the freedom of job classification negotiations between the plaintiff and the union. Other possible effects of the order on other rights of the employees or the union can be visualized. Several women employed in Department 99 testified before the tribunal. One of them who is now classified as an Assembler B is in training for A prime classification. Another testified that she is satisfied to be classified Assembler A and does not wish an Assembler B classification. Still another expressed satisfaction with her classification as an Assembler A. Another, similarly classified, has once before declined an Assembler B classification and is confident that she would be classified as an Assembler B if she requested it. Even Hilda Moe is content with her present assignment and seeks only the higher pay of an Assembler B.

Paragraph (1) of the tribunal's order is set aside because it exceeds the issue presented by the complaint and attempts to adjudicate concerning matters affecting the rights and interests of those who are not parties to the proceeding and who have not been given notice and an opportunity to be heard.

Paragraph 2 of the tribunal's order is set aside because it directs the plaintiff to cease and desist "from discriminatorily applying *any* discriminatory job and classification system" to Hilda Moe. (emphasis added) The only issue before the tribunal was discrimination because of sex. Furthermore, the only discrimination which the statute decrees to be an unfair employment practice is one because of "race, color, religious creed, age, sex, national origin or ancestry." § 31-126.

Paragraphs 3 and 4 of the tribunal's order relate to the wage to be paid Hilda Moe. Paragraph 3 of the order recognizes that, under what was then called the "new" collective bargaining contract, the assemblers have been reclassified. The tribunal's error in awarding back reimbursement to October 1, 1967 has already been discussed.

The order of the tribunal is modified to read as follows:

> Veeder-Root Company, a division of Veeder Industries, Inc., is ordered: (1) to cease and desist from discriminating against Hilda Moe in compensation because of her sex; (2) to pay Hilda Moe a sum which, in toto, shall be the difference between the hourly wage which she has received as an Assembler A or equivalent classification in Department 99 and the hourly wage alloted to employees classified as Assembler B or equivalent classification in Department 99 from January 22, 1969 to the date of payment; (3) thereafter, and so long as Hilda Moe performs the duties which she was performing on January 22, 1969, to classify and pay her as an Assembler B or equivalent classification in Department 99.

Enter judgment accordingly.

HOWARD W. ALCORN

STATE REFEREE

Filed July 31, 1973

APPENDIX E

CONNECTICUT REPORTS

SUPREME COURT

May Term, 1973

VEEDER-ROOT COMPANY, A DIVISION OF VEEDER INDUSTRIES, INC. *v.* COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES

Appeal from an order of a hearing tribunal of the defendant commission that the plaintiff cease and desist from maintaining a discriminatory job and classification system, and counterclaim by the defendant commission for an enforcement order, brought to the Superior Court in Hartford County and referred to *Hon. Howard W. Alcorn*, state referee, who, exercising the powers of that court, rendered judgment for the defendant, from which the defendant appealed to this court. *Error in part; judgment directed.*

Bernard F. McGovern, Jr., assistant attorney general, with whom were *Philip A. Murphy, Jr.*, and, on the brief, *Robert K. Killian*, attorney general, and *F. Michael Ahern*, assistant attorney general, for the appellant (defendant).

James A. Wade, for the appellee (plaintiff).

MACDONALD, J. This is an appeal from a judgment rendered by Hon. Howard W. Alcorn, a state referee, exercising the powers of the Superior Court, which judgment modified an order of a hearing tribunal designated by the Connecticut Commission on Human Rights and Opportunities, hereinafter called the commission. The relevant procedural background is set out in detail in the memorandum of decision filed by the referee acting as a court, and may be briefly summarized.

On February 26, 1969, Hilda G. Moe filed with the commission a complaint against her employer, the plaintiff, the Veeder-Root Company, pursuant to the provisions of § 31-127 of the General Statutes, as amended. Because of the importance of its procedural details and the difficulty of deleting any substantial portions thereof as irrelevant, the entire statute as it appears in the 1969 Supplement to the General Statutes is set forth in the footnote.[1] For similar reasons, the complaint itself is set forth in full below[2] and, as

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[1] "[General Statutes] Sec. 31-127. PROCEDURE. Any person claiming to be aggrieved by an alleged unfair employment practice may, by himself or his attorney, make, sign and file with the commission a complaint in writing under oath, which shall state the name and address of the person, employer, labor organization or employment agency alleged to have committed the unfair employment practice, and which shall set forth the particulars thereof and contain such other information as may be required by the commission. The commission, whenever it has reason to believe that any person has been engaged or is engaged in an unfair employment practice, may issue a complaint. Any employer whose employees, or any of them, refuse or threaten to refuse to comply with the provisions of this chapter may file with the commission a writen complaint under oath asking for assistance by conciliation or other remedial action. After the filing of any complaint, the chairman of the commission shall refer the same to a commissioner or investigator to make prompt preliminary investigation of such complaint and, if such commissioner or investigator determines after such preliminary investigation that there is reasonable cause for believing that an unfair employment practice has been or is being committed as alleged in such complaint he shall immediately endeavor to eliminate the unfair employment practice complained of by conference, conciliation and persuasion. In the conduct of such investigation the commission may issue subpoenas requiring the production of employment records relating to the complaint under investigation. No commissioner or investigator shall disclose what has occurred in the course of such endeavors, provided the commission may publish the facts in the case and any complaint which has been dismissed and the terms of conciliation when a complaint has been adjusted. In case of failure to eliminate such practice, the investigator or investigating commissioner shall certify the complaint and the results of his investigation to the chairman of the commission and to the attorney general. The chairman of the commission shall thereupon appoint a hearing tribunal of three members of the commission or a panel of hearing examiners to hear such complaint and shall cause to be issued and served in the name of the commission a written notice, together with a copy of such complaint, as the same may have been amended, requiring the person, employer, labor organization or employment agency named in such complaint, hereinafter referred to as the respondent, to answer the charges of such complaint at a hearing before such tribunal, at a time and place to be specified in such notice. The place of any such

hearing may be the office of the commission or another place designated by it. The case in support of the complaint shall be presented at the hearing by the attorney general, who shall be counsel for the commission, or the counsel appointed under the provisions of section 31-125a, as the case may be; and no commissioner who previously made the investigation or caused the notice to be issued shall participate in the hearing except as a witness, nor shall he participate in the deliberations of the tribunal in such case. Any endeavors or negotiations for conciliation shall not be received in evidence. The respondent may file a written answer to the complaint and appear at such hearing in person or otherwise, with or without counsel, and submit testimony and be fully heard. The tribunal conducting any hearing may permit reasonable amendment to any complaint or answer and the testimony taken at such hearing shall be under oath and be transcribed at the request of any party. If, upon all the evidence, the trbunal finds that a respondent has engaged in any unfair employment practice, it shall state its findings of fact and shall issue and file with the commission and cause to be served on such respondent an order requiring such respondent to cease and desist from such unfair employment practice and further requiring such respondent to take such affirmative action, including, but not limited to, hiring or reinstatement of employees, with or without back pay, or restoration to membership in any respondent labor organization, as in the judgment of the tribunal will effectuate the purpose of this chapter. If, upon all the evidence, the tribunal finds that the respondent has not engaged in any alleged unfair employment practice, it shall state its findings of fact and shall similarly issue and file an order dismissing the complaint. The commission shall establish rules of practice to govern, expedite and effectuate the foregoing procedure. Any complaint filed pursuant to this section must be so filed within ninety days after the alleged act of discrimination."

2 "STATE OF CONNECTICUT

Commission on Human Rights and Opportunities

HILDA G. MOE Complainant *vs.* VEEDER-ROOT, INC. Respondent	Complaint No. F.E.P.-Sex 4-1 Feb. 26, 1969

Complaint Against Unfair Employment Practice

To the Commission on Human Rights and Opportunities: I Hilda G. Moe, residing at 56 Water St., So. Glastonbury, complain and say that Veeder-Root, Inc., residing at 28 Sargeant St., Hartford, is violating subsection (a) of Section 31-126 of Chapter 563 of the General Statutes of Connecticut, as amended.

On or about January 22, 1969 I spoke with Charles Smith, the general manager of my department, to ask him why women assemblers in my department were doing the same jobs as the men assemblers—yet, the women were only receiving $2.21/hr. while the men received $2.69/hr. Mr. Smith stated that there were a lot of things that men were supposed to do that women weren't doing. The things

he then mentioned I have not seen men doing. I asked to see the men's job classification which he refused to show me.

After July 7, 1965 when the Civil Rights Law of 1964 went into effect I had also asked my supervisor when women would start getting the same pay as men. After consulting a supervisor, my supervisor stated, "This company isn't ready to pay women the same as men!"

I have worked for this company for twenty years. I have been working in Dept. 99 for nine years now. I do not feel the men are doing any different work than the women are. On the basis of these two incidents and my past experience in this company, I feel I am being discriminated against because of my sex (female).

Dated at Hartford this 26 day of February, 1969.

Hilda G. Moe

Subscribed and sworn to before me this 26 day of February, 1969.
Attest: A True Certified Copy

Judith V. Beirz"

may be observed, concluded with the assertion by Mrs. Moe that "I feel I am being discriminated against because of my sex (female)."

On December 19, 1969, following an investigator's report that there was a reasonable ground for complaint in accordance with the investigatory procedure prescribed by § 31-127, the defendant notified the plaintiff to appear for a hearing on the complaint on January 20, 1970. On December 30, 1969, the plaintiff filed an answer denying "any violation of Section 31-126, subsection (a), of Chapter 563 of the General Statutes of Connecticut as amended with respect to Complainant Hilda G. Moe." At intervals between January 20, 1970, and December 1, 1970, also in accordance with the procedural requirements of §31-127, hearings were held before a hearing tribunal of three members appointed by the chairman of the commission. On May 18, 1971, the hearing tribunal filed its decision and order which directed the plaintiff (1) to cease and desist from maintaining the discriminatory job and classification system in effect in its department 99, remove all of the consequences of its discriminatory acts including but not limited to abolishing any distinction between the classification of assembler A and assembler B, or any suc-

cessor classification, and abolishing the job description system, the color coding system or any other system that classifies assemblers on the basis of sex in department 99; (2) to cease and desist from discriminatorily applying any discriminatory job and classification to the complainant Hilda Moe; (3) to cease and desist from paying Hilda Moe as an A assembler less than the B assembler rate as long as the work is substantially the same and notwithstanding any new job classification under a new collective bargaining contract; and (4) to pay Hilda Moe the difference between the A assembler and the B assembler pay rate from October 1, 1967, to and including the date of payment.

On May 28, 1971, the plaintiff appealed to the Superior Court from the hearing tribunal's order challenging, inter alia, the scope of the tribunal's order, and on July 29, 1971, the defendant filed an answer and a counterclaim requesting an order of the Superior Court to enforce the order of the tribunal. On August 31, 1971, the defendant certified the record of the hearings to the court, and on October 5, 1971, the issues on the appeal were closed by the filing of the plaintiff's reply to the defendant's counterclaim. The reply, in essence, again challenged the scope of the tribunal's order. By stipulation of the parties the matter was referred to the Hon. Howard W. Alcorn, a state referee, and, as required by § 31-128, the issues were heard by him acting as a court on the record certified by the defendant. Various issues were presented to and decided by the referee acting as a court, only a few of which have been assigned as error to this court. On April 17, 1972, the court filed a lengthy memorandum of decision and judgment was rendered modifying the order of the tribunal to read as follows: "Veeder-Root Company, a division of Veeder Industries, Inc. is ordered: (1) to cease and desist from discriminating against Hilda Moe in compensation because of her sex; (2) to pay Hilda Moe a sum which, in toto, shall be the difference between the hourly

wage which she has received as an Assembler A or equivalent classification in Department 99 and the hourly wage allotted to employees classified as Assembler B or equivalent classification in Department 99 from January 22, 1969 to the date of payment; (3) thereafter, and so long as Hilda Moe performs the duties which she was performing on January 22, 1969, to classify and pay her as an Assembler B or equivalent classification in Department 99." Thereafter, the commission appealed to this court from the judgment rendered in accordance with the order of modification.

In this appeal the commission claims that the state referee erred (1) in setting aside in its entirety paragraph 1 of the order of the hearing tribunal, or alternatively, in failing to modify the order to cure any formal defects or to remand the matter to the hearing tribunal for this purpose; (2) in limiting paragraph 4 of the order to payment to the complainant Hilda Moe of the higher wage rate from January 22, 1969, to the date of payment instead of from October 1, 1967, the effective date of the inclusion of sex discrimination in § 31-126 of the General Statutes, as amended, to the date of payment; and (3) in denying in part the relief sought by the defendant in its counterclaim.

We deal first with the claim that the court erred in setting aside paragraph 1 of the order of the tribunal, but for a proper understanding of this issue at the outset we set out the undisputed facts regarding Hilda Moe's employment as presented by the court from the record:

"The Veeder-Root Company, an operating division of Veeder Industries, Inc. manufactures at its Hartford factory some 4000 types of counters. In 1959 it reactivated what is known as Department 99 to provide sample orders of particular counters with service on them to customers and service to other departments of the factory. More recently

the work has been expanded to the manufacture of assembly orders for nonproduction counters and parts. There are three job classifications in the department in ascending order, namely Assembler A, B, and A prime. The present case is concerned only with classifications A and B. The job description of Assembler A requires a good knowledge of counter mechanisms, the complete assembly of a specific line or type of counters from parts and assemblies, the operator must obtain a blueprint to check component part numbers and specifications, and he must use a variety of hand tools such as mallets, hammers, punches, picks, tweezers, pliers, etc. The job description for Assembler B requires a general knowledge of counters, the complete assembly of a variety of standard counters, the operator must be able to read blueprints as a whole, he must use a wide variety of hand tools including hand reamers, hand facing tools and files in addition to those used by Assembler A and must operate a drill press, bench grinder, riveting or stamping machine and foot press, and he must be able to select and try parts, fit, adjust and align to proper function, reset, and figure alignment and function.

"Fourteen women are employed in the Assembler A classification. Seven men are employed in the Assembler B classification. Assemblers A and B work side by side and occasionally assist one another. Assemblers B generally assemble various types of counters while Hilda Moe works on a single type. In November 1969 Assembler A pay was raised from $2.215 to $2.565 per hour and Assembler B pay was raised from $2.699 to $2.899 per hour. The larger pay rates have remained constant since.

"Hilda Moe has been employed by the plaintiff continuously since January 4, 1949. Since October 30, 1959 she has been an Assembler A in Department 99. Hilda Moe's job is to assemble what is known as a visi-counter using the tools described in the Assembler A job classification.

"Prior to the hearing in this case no female had ever been classified as an Assembler A. Since Department 99 was reconstituted in 1959 the Assembler A and B jobs have been designated as female and male jobs respectively. Hilda Moe and other females classified as Assembler A have exhibited the capability to do work commonly assigned to and done by males classified as Assembler B. Males have been transferred from other jobs in the factory to Assembler B jobs in Department 99 when females with greater seniority and/or assembly experience were not advised of, or advanced to, the opening."

It was the conclusion of the hearing tribunal, based essentially on the facts recited above, that there was no substantial difference between the two job classifications, that the pay differential between them was based on sex and that, as a consequence, there was a violation of § 31-126 (a). This conclusion is not disputed. What is the subject of dispute, however, is the form of the order. In ordering the plaintiff to "cease and desist from maintaining the discriminatory job and classification system in effect at Veeder Root in Department 99 and remove all of the consequences of its discriminatory acts including but not limited to abolishing any distinction between the classification of assembler A and assembler B, or any successor classification system, abolishing the job description system, the color coding system or any other system that classifies assemblers on the basis of sex in Department 99," the commission clearly intended to act with respect to sex discrimination as including other female employees rather than sex discrimination directed solely at Hilda Moe. The plaintiff claims that the order went beyond the scope of the pleadings, and in this we must agree. As stated by the referee, "the clear import of the complaint was that... [Hilda Moe], as one of the women in the department, was, without any bona fide occupational qualification or need, being discriminated against in compensation because of her sex.... The complaint could not properly be

construed as an attempt to represent, or speak for, the other women in the department as a class."

Furthermore, in its answer the plaintiff denied "any violation of Section 31-126, subsection (a), of Chapter 563 of the General Statutes of Connecticut as amended *with respect to the Complainant Hilda G. Moe* [emphasis added]." The issue was thus framed by the pleadings — was there any sex discrimination in department 99 in the plaintiff's plant directed against Hilda Moe? As the hearing progressed and it became apparent that sex discrimination existed in department 99 on a department-wide basis, the statute, § 31-127, provided the means whereby the commission could have either amended the complaint to include an attack on the department-wide discrimination or issued a new complaint in the name of the commission containing such an allegation. Had the commission taken either of these actions there would have been no question of the issues that were being litigated as involving department wide discrimination and of the scope of the order that the commission might issue. Instead, no amendment or new complaint was issued with the result that the commission and the plaintiff are now at odds about what issues were actually litigated and about the legality of the commission's order. While it is true that evidence was introduced before the hearing tribunal regarding department-wide discrimination, it is also true that this evidence was relevant to the issue of whether Hilda Moe had been placed in the assembler A class solely because of her sex, or whether her placement was a result of some other form of selective process not prohibited by the Fair Employment Practices Act. The introduction of this evidence is obviously not decisive on the question of whether the plaintiff had actual notice that the commission was attacking department-wide discrimination.

Section 31-127 clearly provides that the respondent

appear before the hearing tribunal in order "to answer the charges of . . . [the] complaint." This means that the charges in the complaint frame the issues to be decided by the hearing tribunal. Since the individual complaint of Hilda Moe, fairly read, did not provide the respondent, the plaintiff, with notice of the scope of the action and since the commission, under § 31-127 of the General Statutes, was empowered to issue a new complaint attacking department-wide sex discrimination which would have apprised the plaintiff of the scope of the action, we conclude that the plaintiff was justified in its belief that the commission's attack was directed solely at sex discrimination as applied only to Hilda Moe. It was, therefore, improper for the commission to issue an order requiring the plaintiff to cease and desist from department-wide discrimination.

The commission also argues that the court's action in negating paragraph 1 of the order runs afoul of title VII of the Civil Rights Act of 1964, 78 Stat. 253, as amended, 42 U.S.C. §§ 2000e et seq., a federal law which inter alia prohibits employment discrimination on the basis of sex. The commission claims that Congress in promulgating title VII did not intend to preempt state action in the field. While this may be true, it does not mean that states are obligated to apply federal procedural law to a complaint brought pursuant to a state statute prohibiting sex discrimination in employment. The fact that under federal law individual complaints of employees are liberally construed so that class actions are established more easily; see *Bowe* v. *Colgate-Palmolive Co.*, 416 F.2d 711, 715 (7th Cir.); is of little significance in determining whether the commission deviated from § 31-127 when it issued a blanket order against sex discrimination in department 99 merely on the basis of an individual complaint of a single employee of the department.

In holding that the commission failed to comply with

§ 31-127 in that its order went beyond the scope of the complaint, we do not share the commission's fear that "if the decision of the Superior Court is allowed to stand, the Connecticut Fair Employment Practices Law will become ineffective" and the "deferral of complaints of discrimination [by the federal Equal Employment Opportunity Commission] may cease." In future cases, when it finds more extensive discrimination than that fairly charged in the complaint, the commission need only issue another complaint, as the same may have been amended, containing allegations sufficient to apprise the respondent of the enlarged scope of the action.

The next claim of error is that the court erred in setting aside, in part, paragraph 4 of the order of the hearing tribunal to the extent of allowing payment to Hilda G. Moe of a sum of money representing the wage difference between assembler A and assembler B from January 22, 1969, to the day of payment, instead of from October 1, 1967, to the date of payment, as ordered by the hearing tribunal. Section 31-127 of the General Statutes provides that any complaint filed pursuant to § 31-127 "must be so filed within ninety days after the alleged act of discrimination." Since this is the only time limitation contained in chapter 563, the trial court was correct in concluding that that limitation governed rather than the general two-year statutory limitation in General Statutes § 52-596, stating that "[t]he clear import of § 31-127 is to furnish redress for an 'act of discrimination' which has been complained of within ninety days of the date on which it is alleged to have occurred," and in its determination that the award of supplemental pay to Hilda Moe should be computed from that day. Were this not the case we think that some employees would be tempted to bring actions under chapter 563, with no expense to themselves because the attorney general and the commission would act as their attorneys, in the hope that they might

force settlements involving substantial amounts of supplemental pay. By limiting the time of redress to the act of discrimination which occurred within ninety days of the complaint, the incentive for bringing such spurious actions is substantially reduced, and we think this was the intent of the legislature in establishing the ninety-day limit.

The view we take of the legislature's intent in specifying the ninety-day limit to actions undr § 31-127 is fully supported by the legislative history of the statute. Comparisons between time limits found in this section and other statutory remedies are of little value in determining the legislative intent underlying § 31-127. We must look instead to the clear statements of purpose expressed during consideration of this limitation by the legislature.

Section 31-127 in its original form did not grant to the commission powers to make orders compelling employers to pay back pay to employees against whom unfair labor practices had been used. The 1959 legislature considered a public act, No. 334 to enlarge the powers of the commission and during floor debate in the House of Representatives one representative questioned the wisdom of retaining the six-month limitation which existed at that time in light of the commission's new powers. In an attempt to resolve the problem he submitted a floor amendment deleting the six-month limitation and substituting the present ninety-day limitation. This amendment was accepted by one of the sponsors of the bill who said: "I will accept it in the spirit in which it's been offered." A further explanatory comment was offered by the minority leader who said: "The time [limit] was not important really in the bill as it was originally cast prior to the proposed change in it.... Now, under the proposed change ... it [the commission] can reinstate and require the payment of back pay. If the period for filing the complaint is allowed to be too long, a substantial amount of back pay can

build up, and it seems intelligent to narrow that period for filing down as much as possible. That's the reason for the amendment.... I think it's a sensible change in the bill." 8 H. R. Proc., Pt. 7, 1959 Sess., p. 2596. The amendment was thereafter passed in the House of Representatives and adopted by the Senate. There can be no doubt that the legislature intended the ninety-day limitation to serve as a bar to recovery of back pay beyond ninety days prior to the complaint. In the present case the complaint filed on February 26, 1969, by Hilda Moe alleged that discriminatory practices were being employed against her and clearly addressed itself to a course of conduct by the defendant extending back over a period of time considerably longer than ninety days prior to the filing of the complaint. Under the statutory limitation, however, recovery of back pay could be allowed only for the period of ninety days preceding the complaint. Accordingly, this court must conclude that Hilda Moe was entitled to back pay for the ninety days preceding February 26, 1969, rather than only from January 22, 1969, as ordered by the court.

The final assignment of error has been adequately covered by the foregoing discussion.

There is error with respect to the period of time for which Mrs. Moe is entitled to receive supplemental pay, and the case is remanded with direction to modify the judgment in that respect in accordance with this opinion.

In this opinion HOUSE, C. J., SHAPIRO and LOISELLE, JS., concurred.

BOGDANSKI, J. (dissenting). I agree that there was error with respect to the back pay order, but I cannot agree with the majority that the complaint of the commission did not give the Veeder-Root Company, hereinafter called the plain-

tiff, actual notice that the commission was attacking department-wide discrimination.

The commission began this proceeding by transmitting Hilda Moe's complaint, as more fully set forth in footnote 2 of the majority opinion, to the plaintiff. In her complaint, Hilda Moe specifically alleged department-wide discrimination by stating: (1) that on January 22, 1969, she asked the general manager of her department "why women assemblers in my department were doing the same jobs as the men assemblers" yet were receiving less pay; (2) that the general manager "stated that there were a lot of things that men were supposed to do that women weren't doing" but that "the things he then mentioned I [Hilda Moe] have not seen men doing"; (3) that the general manager refused to show her the men's job classification after she had requested to see it; (4) that the men in her department were not doing "any different work than the women" were; (5) that in 1965 she had asked her supervisor when women would start getting the same pay as men, and that her supervisor replied, after consultation with a superior, that "[t]his company isn't ready to pay women the same as men."

The majority states that the complaint, fairly read, "was directed solely at sex discrimination as applied only to Hilda Moe," because her complaint concluded with this statement: "On the basis of these two incidents and my past experience in this company, I feel I am being discriminated against because of my sex (female)."

Considering the complaint as a whole, the majority places undue emphasis on Mrs. Moe's statement of personal aggrievement. This statement satisfies merely the requirement of § 31-127 that only those persons "claiming to be aggrieved by an alleged unfair employment practice" may file a complaint with the commission. The rest of the complaint

unequivocally alleges department-wide sex discrimination. As the hearing tribunal concluded, "by the filing of such complaint the Respondent was placed on notice of discrimination on the basis of sex, both as a result of the differential in pay, and with regard to the job classification system and as a result of her past experience in this Company.... [T]he scope of the charges include [sic] not only the differential in pay, but also attack [sic] the discriminatory system in effect at Veeder-Root, and as such system was applied to Hilda Moe."

Nine days of hearing were held in this case, resulting in a transcript of over 700 pages. From the record, it is apparent that the hearing was geared to the issue of whether the plaintiff had maintained a department-wide classification system which discriminated on the basis of sex. This fact was understood by counsel for the plaintiff, who said in his opening statement: "What the Commission has to prove here to prevail is really a very narrow issue. They have to prove that the job of Assembler, Grade A, the lower rated job, has substantially the same amount of skill, effort and responsibility involved as the higher labor grade.... We intend to demonstrate... that the jobs are far from the same as far as skill, effort and responsibility are concerned."

Thus, much evidence was introduced pertaining to department-wide discrimination. Five women, assemblers A, testified to the substantial similarity of their jobs to the jobs of male assemblers B. Documentary evidence to the same effect was also received. The plaintiff produced evidence to show that the job classification system was bona fide. Moreover, the members of the hearing tribunal personally inspected department 99 in order to observe all the employees at work.

The plaintiff has not claimed that any of this evidence

was irrelevant to the issues as limited by the complaint, nor has it ever made any objection to this evidence as being beyond the scope of the complaint. Moreover, at no time did the plaintiff request f··rth·r specificity with respect to the charges. Rather, the .aintiff itself introduced evidence regarding its classification system in its defense.

Given the allegations of the complaint and the broad statutory powers vested in the commission by § 31-127 to proceed against any and all unfair labor practices, the failure of the plaintiff to seek to clarify the scope of the proceeding strongly suggests that it was aware that its job classification system was under attack. Indeed, neither in its brief to this court nor in its appeal to the Superior Court has the plaintiff ever claimed that it did not have adequate notice. It has argued only that notice should have been given to persons other than itself. This omission reinforces the conclusion that the plaintiff was on notice from the date of the complaint that its practice of department-wide sex discrimination was being challenged.

I believe that the conclusions of the majority run counter to the express provisions of the statute as well as the record. The Commission on Human Rights and Opportunities is the creature of the Connecticut Fair Employment Practice Act, §§ 31-122 — 31-128 of the General Statutes. A reading of the express and unambiguous language of the act demonstrates that the commission acted properly in challenging department-wide sex discrimination. Section 31-127[1] provides that

[1] "[General Statutes] Sec. 31-127. PROCEDURE. Any person claiming to be aggrieved by an alleged unfair employment practice may . . . file with the commission a complaint in writing under oath, which shall . . . set forth the particulars thereof . . . . After the filing of any complaint, the chairman of the commission shall refer the same to a commissioner or investigator to make prompt preliminary investigation of such complaint and, if such commissioner or investigator determines after such preliminary investigation that there is reasonable cause for believing that an unfair employment practice has been

or is being committed as alleged in such complaint he shall immediately endeavor to eliminate the unfair employment practice . . . by conference, conciliation and persuasion. . . . In case of failure to eliminate such practice, the investigator . . . shall certify the complaint and the results of his investigation to the chairman of the commission and to the attorney general. The chairman of the commission shall thereupon appoint a hearing tribunal of three members of the commission . . . to hear such complaint and shall cause to be issued and served in the name of the commission a written notice, together with a copy of such complaint, . . . requiring the . . . employer . . . named in such complaint . . . to answer the charges of such complaint at a hearing before such tribunal . . . . The case in support of the complaint shall be presented at the hearing by the attorney general, who shall be counsel for the commission . . . . The respondant may file a written answer to the complaint and appear at such hearing in person or otherwise, with or without counsel, and submit testimony and be fully heard. . . . If, upon all the evidence, the tribunal finds that a respondent has engaged in any unfair employment practice, it shall state its findings of fact and shall issue and file with the commission and cause to be served on such respondent an order requiring such respondent to cease and desist from such unfair employment practice and further requiring such respondent to take such affirmative action, including, but not limited to, hiring or reinstatement of employees, with or without back pay, or restoration to membership in any respondent labor organization, as in the judgment of the tribunal will effectuate the purpose of this chapter. If, upon all the evidence, the tribunal finds that the respondent has not engaged in any alleged unfair employment practice, it shall state its findings of fact and shall similarly issue and file an order dismissing the complaint. The commission shall establish rules of practice to govern, expedite and effectuate the foregoing procedure. Any complaint filed pursuant to this section must be so filed within ninety days after the alleged act of discrimination."

on receiving the complaint of any person claiming to be aggrieved by an alleged unfair employment practice the commission may issue a complaint against that practice. The statute commands the commission to grant whatever relief is necessary to seek out and eliminate the discriminatory practices alleged. Mrs. Moe, however deserving of relief she personally may have been, was merely incidental to the main thrust of the action of the commission in this case. The commission is primarily authorized to seek the elimination of public wrongs, not the vindication of private rights. Indeed, Mrs. Moe was not even a party to this action. In fact, a different statute governs private actions for back pay in cases of sex discrimination. See General Statutes § 31-76. Presented with allegations of department-wide discrimina-

tion, the commission would have ignored its statutory responsibility had it merely sought to redress the individual grievance of Mrs. Moe.

For these reasons I dissent.

APPENDIX F

Connecticut General Statutes, Section 31-126, *Unfair Employment Practices.* It shall be an unfair employment practice (a) for an employer, by himself or his agent, except in the case of a bona fide occupational qualification or need, because of the race, color, religious creed, age, sex, national origin, ancestry or physical disability, including, but not limited to, blindness of any individual, to refuse to hire or employ or to bar or discharge from employment such individual or to discriminate against him in compensation or in terms, conditions or privileges of employment. . . .

Connecticut General Statutes, Section 31-127. *Procedure.* Any person claiming to be aggrieved by an alleged unfair employment practice may, by himself or his attorney, make, sign and file with the commission a complaint in writing under oath, which shall state the name and address of the person, employer, labor organization, or employment agency alleged to have committed the unfair employment practice, and which shall set forth the particulars thereof and contain such other information as may be required by the commission.

* * *

Any complaint filed pursuant to this section must be so filed within ninety days after the alleged act of discrimination.

APPENDIX G

Excerpts from Title VII of the 1964
Civil Rights Act, 42 U.S.C. § 2000e

"42 U.S.C. § 2000e-2(a). It shall be an unlawful employment practice for an employer —

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin. [As amended March 24, 1972, P. L. 92-261, Sec. 8.]

(b) It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin, or to classify or refer for employment any individual on the basis of his race, color, religion, sex, or national origin."

* * *

"42 U.S.C. § 2000e-5(c). In the case of an alleged unlawful employment practice occurring in a State, or political subdivision of a State, which has a State or local law prohibiting the unlawful employment practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, no charge may be filed under subsection (a) by the person aggrieved

before the expiration of sixty days after proceedings have been commenced under the State or local law, unless such proceedings have been earlier terminated, provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective date of such State or local law. If any requirement for the commencement of such proceedings is imposed by a State or local authority other than a requirement of the filing of a written and signed statement of the facts upon which the proceeding is based, the proceeding shall be deemed to have been commenced for the purposes of this subsection at the time such statement is sent by registered mail to the appropriate State or local authority. [As amended March 24, 1972, P. L. 92-261, sec. 4.]"

* * *

"42 U.S.C. § 2000e-5(e). A charge under this section shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred and notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) shall be served upon the person against whom such charge is made within ten days thereafter, except that in a case of an unlawful employment practice with respect to which the person aggrieved has initially instituted proceedings with a State or local agency with authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, such charge shall be filed by or on behalf of the person aggrieved within three hundred days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency. [As amended March 24, 1972, P. L. 92-261, Sec. 4.]"

SUPREME COURT, U. S.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-703

CONNECTICUT COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES, *Petitioner*

v.

VEEDER-ROOT COMPANY
A Division of Veeder Industries, Inc.,
Respondent

Amicus Curiae Brief in Support of Petition for Writ of Certiorari

AMICUS CURIAE BRIEF

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INDEX

Page

LOWER COURT OPINIONS 1

INTEREST OF AMICUS CURIAE 2

AMICUS CURIAE AUTHORITY 3

QUESTION PRESENTED 3

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED .. 3

STATEMENT OF THE CASE 3

REASONS FOR GRANTING A WRIT OF CERTIORARI 4

ARGUMENT:

INSTRUMENTALITIES OF THE STATE HAVE A CONSTITUTIONAL DUTY TO REMEDY EMPLOYMENT PRACTICES FOUND TO BE DISCRIMINATORY AND CANNOT AVOID THIS DUTY BY THE ERECTION OF PROCEDURAL BARRIERS WHICH ALLOW THE DISCRIMINATORY PRACTICES TO CONTINUE UNABATED.

CONCLUSION 15

CITATIONS

CASES:

Agwilines, Inc. v. NLRB, 87 F.2d 146 (5th Cir. 1936) 15

Arnett v. Seattle General Hospital, 65 Wash. 2nd 22, 395 P.2d 503 (1964) 11

Bailey v. Patterson, 323 F.2d 201 (5th Cir. 1963) 13

Betts v. Easley, 161 Kan 459, 169 P.2d 831 (1946) .. 5

Bowe v. Colgate-Palmolive Co., 416 F.2d 711 (7th Cir. 1969) 9, 12, 13, 14

Burton v. Wilmington Parking Authority 365 U.S. 715 (1961) 6

Bush v. Orleans Parish School Board, 308 F.2d 491 (5th Cir. 1963) 4

Page

City of Highland Park v. Michigan Fair Employment Practices Comm., 364 Mich. 508, 111 N.W. 2d 297 (1969) 11
Evans v. Newton, 382 U.S. 296 (1966) 6
Ferguson v. United Parcel Service, Md. , A A.2d , 6 E.P.D. ¶ (1973) 2, 8
Frontiero v. Richardson, U.S. , 93 S. Ct. 1764 (1973) 8
Gilliam v. City of Omaha, 331 F. Supp. 4 (D. Neb. 1971), *Rev'd on other grounds,* 459 F.2d 63 (8th Cir. 1972) 6
Graniteville Co., Sibley Division v. EEOC, 438 F.2d 32 (4th Cir. 1972) 9, 10
Griggs v. Duke Power Co., 401 U.S. 424 (1971) 8, 15
Hall v. Wertham Bag Corp. 251 F. Supp. 184 (M.D. Tenn. 1966) 8, 13
Interstate Commerce Comm. v. Jersey City, 322 U.S. 503 (1944) 14
Ironworkers Local No. 67 v. Hart, 191 N. W. 2d 758 (1971) 8
Jenkins v. United Gas Corp. 400 F. 2d 2 (5th Cir. (1968) 6, 9, 10, 11, 13
Lacomastic Corp. v. Parker, 54 F. Supp. 138 (D. Md. 1944) 14
Local 57, International Ladies Garment Workers Union, AFL-CIO v. NLRB, 374 F.2d 295 (D.C. Cir. 1967) *cert. denied* 387 U.S. 942 (1967) 15
Louisiana v. United States, 380 U.S. 145 (1965) 15
Love v. Pullman, 404 U.S. 522 (1972) 11
McDonnell-Douglas Corp. v. Green, U.S. , 93 S. Ct. 1817 (1973) 8, 14
Nathanson v. NLRB, 344 U.S. 25 (1952) 10
Newman v. Piggie Park Enterprises, Inc., 390 U.S. 400 (1968) 9
NLRB v. Kelly & Picerve, Inc., 298 F.2d 895 (1st Cir. 1962) 15
NLRB v. West Kentucky Coal Co., 116 F.2d 816 (6th Cir. 1940) 11, 15
Potts v. Flax, 313 F.2d 284 (5th Cir. 1963) 6
Sanchez v. Standard Brands, Inc., 431 F.2d 455 (5th Cir. 1970) 10

Page

San Diego Building Trades Council v. Garman 359 U.S. 236 (1959) 10

Sprogis v. United Air Lines, Inc., 444 F.2d 1194 (7th Cir. 1971), *cert. denied* 404 U.S. 991 (1971) 13, 14

State of Minnesota v. Bergeron, 290 Minn. 351, 187 N.W. 2d 680 (1971) 5, 6

Sullivan v. Little Hunting Park, 396 U.S. 229 (1969) 5

Testa v. Katt, 330 U.S. 386 (1947) 5

CONSTITUTIONAL PROVISIONS:

United States Constitution, Article VI, Sec. 2. .. 5

United States Constitution, Fourteenth Amendment 5, 6

STATUTES:

Connecticut General Statutes §§ 31-123 *et seq* .. 3

Civil Rights Act of 1866, 42 U.S.C. 1982 (1970) .. 5

National Labor Relations Act, 29 U.S.C. § 156 *et seq* (1970) 15

Title VII of the Civil Rights Act of 1964, 42 U.S. 2000e (1970) 5, 7, 12, 13, 14

SECONDARY MATERIALS:

Bonfield, *An Institutional Analysis of the Agencies Administering Fair Employment Practices Laws,* 42 N.Y.U.L. New 823, 1035 (1967) 10

3 CCH Employment Practices Guide, ¶ 29, 080 (1973) 10

Crampton, *Causes and Cures of Administrative Delay,* 58 A. B.A.J. 937 (Sejt. 1972) 9

Davis, Administrative Law § 8.02 (3rd ed. 1972) 14

Jones, *Disestablishment of Labor Unions for Engaging in Racial Discrimination—A New Remedy for An Old Remedy,* 1972 Wisc. L. Rev. 351 (1972) .. 11

Note, *Developments in the Law: Employment Discrimination and Title VII of the Civil Rights Act of 1964,* 84 Harv. L. Rev. 1109 (1971) 7, 12, 13

Page

Sutin, *The Experience of State Fair Employment Commissions: A Comparative Study*, 18 Vand. L. Rev. 965 (1965) 10, 12

The New York Times, July 30, 1973, p. 17, Col. 8 9

Tierney, *Separate But Equal—An Analysis of State Civil Rights Law Enforcement and its Interaction with Federal Law*, 49 Notre Dame Lawyer 205 (1973) 10

Witherspoon, *Civil Rights Policy in the Federal System: Proposals for a Better Use of the Administrative Process*, 74 Yale L.J. 1171 (1965) 12

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AMICUS CURIAE BRIEF

LOWER COURT OPINION

The opinion of the Supreme Court of the State of Connecticut is reported at — Conn. —, — A.2d — (1973). [Opinion is unofficially reported at 6 E.P.D. ¶ 8958). The opinion of the Superior Court of Hartford County, Connecticut is unofficially reported at 4 E.P.D. ¶ 7801 (1972)]

INTEREST OF AMICUS CURIAE

The interest of the International Association of Official Human Rights Agencies (IAOHRA) arises because it is an umbrella organization consisting of 87 member and 500 constituent state and local civil rights agencies throughout the country, all of whom are charged with the enforcement of fair employment practices (FEP) laws similar to that of Connecticut. The issues raised in this case are not isolated to Connecticut but are experienced in varying degrees by all nonfederal civil rights agencies. Affirmance of the decision below would result in the establishment of two different standards for discriminatory conduct; one under state law, another federal law. The consequences of this decision would impose a much more lenient standard of conduct upon employers subject to state fair employment practices laws and of necessity impose a strict curtailment upon the state enforcement agency to remedy discriminatory conduct found to exist.

The interest of the State of Maryland Commission on Human Relations arises because it has been subjected to a state judicial interpretation identical to the issues presented here. *Ferguson* v. *United Parcel Service,* — Md.—, — A 2d — (No. 130, filed Nov. 6, 1973) (unofficially reported in 6 E.P.D. 8926 (1973). The Maryland Commission will also seek to obtain review by this Court of its state court's interpretation of its antidiscrimination law at the appropriate time. The Maryland's FEP Law and administrative structure are identical to that of Connecticut.

The issue identified by the decision below is facially only a question of state administrative procedure, i.e., the type of notice required in advance of a public

hearing on charges of employment discrimination. However, the deeper issues involve the full enforcement of constitutionally protected rights and remedies and the vitality of state agencies created to protect and enforce those rights and remedies.

AMICUS CURIAE AUTHORITY

IAOHRA and the State of Maryland Commission on Human Relations have obtained the consent of all parties to file a brief amicus curiae pursuant to Rule 42(1) of the Rules of the Supreme Court of the United States.

QUESTION PRESENTED

Whether a state court can constitutionally impose upon an individual victim of discriminatory employment practices a procedure which denies her the ability to vindicate rights and seek remedies for herself and those of the class she represents in violation of a national policy to promote the effective enforcement of civil rights laws on a local level?

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

The statues involved are Conn. Gen. Stat. §§ 31-123 *et seq.* and Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e (1970). The constitutional provisions are Article VI, Sec. 2 and the Fourteenth Amendment of the United States Constitution.

STATEMENT OF THE CASE

The statement set forth in Petitioner's Brief is adopted by *Amici* and incorporated herein by reference.

REASONS FOR GRANTING A WRIT OF CERTIORARI

The "Reason for Granting the Writ" as recited in Petitioner's brief are adopted by *Amici* and incorporated herein by reference.

In addition, *Amici* urge this Court to grant a Writ of Certiorari for the following reasons:

ARGUMENT

INSTRUMENTALITIES OF THE STATE HAVE A CONSTITUTIONAL DUTY TO REMEDY EMPLOYMENT PRACTICES FOUND TO BE DISCRIMINATORY AND CANNOT AVOID THIS DUTY BY THE ERECTION OF PROCEDURAL BARRIERS WHICH ALLOW THE DISCRIMINATORY PRACTICES TO CONTINUE UNABATED.

A. Introduction

The Connecticut court's refusal to sustain the action of the Connecticut Commission which ordered Respondent to eliminate certain employment practices found to be unlawful misconstrues the Commission's law enforcement process and severely limits its ability to execute its statutory and constitutional mandate to eliminate any and all employment practices found to be discriminatory.

Mrs. Moe, by filing her complaint, asserted rights which are identical under both federal and state law and are guaranteed under the federal constitution. Relief provided under the state scheme must be substantially similar to that provided under federal law. In effect, once the state has adopted the federal law as its own, it must therefore adhere to federal standards to eliminate discrimination or it becomes involved in unconstitutional state action. *Bush* v. *Orleans Parish School Board,* 308 F.2d 491 (5th Cir. 1962).

The Connecticut Commission had a duty under the Fourteenth Amendment of the U.S. Constitution to eliminate discrimination it discovered. It is firmly established that state civil rights agencies and state courts are under a constitutional obligation to enforce the same rights and provide the same remedies in the civil rights field as are available in federal courts. *Sullivan* v. *Little Hunting Park,* 396 U.S. 229 (1969); *State of Minnesota* v. *Bergeron,* 290 Minn. 351, 187 N.W. 2d 680 (1971); *see also, Betts* v. *Easley,* 161 Kan. 459, 169 P. 2d 831 (1946).

In *Testa* v. *Katt,* 330, 386 (1947), this Court ruled that the state court's failure to apply federal standards was in violation of Article VI, Section 2, of the U. S. Constitution which binds state judges to the "supreme law of the land." In effect, this Court ruled that a state judicial body could not, under the supremacy clause, deviate from national policy and ignore the necessity of full application of federal rights. Again this Court in *Sullivan* v. *Little Hunting Park, supra,* reaffirmed this position when it granted review of and then reversed the decision of the Virginia Supreme Court of Appeals for failure to act in accordance with federal anti-discrimination standards when the state decision ostensibly turned upon a state procedural issue. In so holding, this Court observed that:

> "We held in *Jones* v. *Mayer Co.* . . . that although § 1982 is couched in declaratory terms and provides no explicit method of enforcement, a federal court has power to fashion an effective remedy . . . That federal remedy for the protection of a federal right is available in the state court if that court is empowered to grant injunctive relief generally as is the Virginia Court . . . *Id.* at 238 [citations omitted].

With respect to the instant case, the Connecticut Commission could not disregard the discriminatory practices of the Respondent or its failure to do so could be construed as unconstitutional state action. That is, the failure to actively seek out and eliminate discrimination makes the state agency or reviewing state courts instruments of discrimination. *Burton* v. *Wilmington Parking Authority,* 365 U.S. 715 (1961). This Court stated in *Burton* that "no state may effectively abdicate its responsibilities by either ignoring them or by merely failing to discharge them . . ." *Id.* at 725. If it does not act, the state becomes a joint participant in the illegal discrimination by permitting it to continue unabated. *Evans* v. *Newton,* 382 U.S. 296 (1966); *State of Minnesota* v. *Bergeron, supra;* see also, *Potts* v. *Flax,* 313 F. 2d 284, 289 (5th Cir. 1963); *Jenkins* v. *United Gas Corp.,* 400 F.2d 28, 34 (5th Cir. 1968).

This approach was followed in *Gilliam* v. *City of Omaha,* 331 F. Supp. 4 (D. Neb. 1971), *rev'd on other grounds,* 459 F. 2d (8th Cir. 1972). There the court required the Nebraska Equal Opportunity Commission to enforce not only state civil rights laws but also Fourteenth Amendment prohibitions against discrimination. In holding that the state Commission could not refrain from awarding remedies available under the federal civil rights scheme, the court remarked that:

> If punitive damages are necessary to fully vindicate a constitutional right, when that right is before a federal court, then such damages are every bit as necessary when that right is before a state administrative commission or a state court. Basic federal constitutional rights cannot be watered down by state statutes or state court opinions. *Id.* at 8. [Citation Omitted].

Additionally, a delicate federal-state relationship could be infringed by a holding that the Connecticut Commission cannot grant rights and remedies substantially equivalent to federal law. The Connecticut FEP law purports to create rights and remedies identical to those created by federal law. The federal FEP law encourages states to develop rights consonant with federal law. See, *Note, Developments in the Law: Employment Discrimination and Title VII of the Civil Rights Act of 1964,* 82 Harv. L. Rev. 832, 843 (1969).

Title VII provides an opportunity for the Connecticut Commission to deal with employment discrimination charges first. 42 U.S.C. 2000 e-5(b) (1970). With the passage of this Act, Congress clearly intended to promote the concept of federalism by insuring that the federal civil rights scheme is implemented on a local level, believing this to be the most effective means of eliminating discrimination. In fact, the local enforcement provision was a cornerstone of the federal act. See, *Note, Development in the Law: Employment Discrimination and Title VII of the Civil Rights Act of 1964,* 84 Harv. L. Rev. 1109, 1212-1216 (1971).

Despite the national policy to provide for uniform enforcement of civil rights laws on a local level, recent decisions of the highest courts of three states have taken conflicting positions regarding the type of administrative notice required of a state civil rights agency to provide class remedies to eliminate discriminatory employment practices. Two of these state court decisions are repugnant to the Federal Constitution in that they permit employment practices to continue despite unchallenged findings that the practices are discriminatory on the basis of sex and race.

The Supreme Court of Iowa, when faced with the same issue of administrative notice presented here, applied federal standards to an individual charge of discrimination and held the notice sufficient to permit the state civil rights agency to afford class relief, thus satisfying its constitutional duty. *Ironworkers Local No. 67* v. *Hart,* 191 N.W. 2d 758 (1971). However, the Connecticut court below and the Maryland Court of Appeals in *Ferguson* v. *United Parcel Service,*— Md. —, — A.2d— (No. 230, filed Nov. 6, 1973) (unofficially reported in 6 E.P.D. ¶ 8926) adopted a strict and unconstitutional notice standard which disregards the decisions of this Court regarding the definition of the term "discrimination," the status occupied by a person charging discriminatory employment practices, and the technical formalities required of such a person.

B. Nature of Discrimination

In *Griggs* v. *Duke Power Co.,* 401 U.S. 424 (1971) this Court stated that employment practices that operate as artificial, arbitrary and unnecessary barrier to employment opportunities on the basis of race or other classes are prohibited under federal law. This concept was also applied to an individual plaintiff in *McDonald Douglas* v. *Green,* — U.S. —, 93 S. Ct. 1817 (1973). Discriminatory employment practices on the basis of sex have also been condemned. *Frontiero* v. *Richardson,* — U.S. —, 93 S. Ct. 1764 (1973).

When a person like Hilda G. Moe alleges employment discrimination, that allegation requires an examination of the consequences of the challenged employment practice upon all members of Ms. Moe's class, that is, females. The very term "discrimination" has been defined to mean unlawful conduct directed at a class. *Hall* v. *Wertham Bag Corp.,* 251 F.Supp. 184 (M.D.

Tenn. 1966). Indeed, employment discrimination is considered to be an unlawful practice involving a class characteristic. *Bowe* v. *Colgate-Palmolive Co.*, 416 F.2d 711 (7th Cir. 1969). The Respondent's practices, not any individual treatment, were found to have victimized Ms. Moe. It is impossible to separate Ms. Moe from either the application of these practices or from her class characteristic. Therefore, in order to establish that Ms. Moe was a victim of sex discrimination, the general employment practices at Respondent's facility must be examined and then remedied, if discriminatory.

C. Status Occupied by a Person Charging Discriminatory Employment Practices

A person like Ms. Moe is viewed not only as an aggrieved person seeking to make herself whole, but also a private attorney general vindicating her rights and the rights of all those persons similarly situated. *Newman* v. *Piggie Park Enterprises, Inc.*, 390 U.S. 400 (1968); *Graniteville Co., Sibley Division* v. *EEOC*, 438 F.2d 32 (4th Cir. 1972); *Jenkins* v. *United Gas Corp.*, 400 F.2d 28 (5th Cir. 1970). Therefore, a general inquiry arising from her individual complaint was proper since the employment practices which can discriminate against a complainant can discriminate against others similarly situated.

In addition, the concept of Ms. Moe operating as a private attorney general has the effect of reducing the incidence of recurring claims, relieving the workload of state and federal civil rights agencies,[1] reducing

[1] EEOC Chairman William H. Brown, III, stated that EEOC's current national backlog amounts to over 60,000 cases and is projected to exceed 90,000 by the end of 1974. The New York Times, July 30, 1973, p. 17, Col. 8. See also Crampton, *Causes and Cures of Administrative Delay*, 59 A.B.A.J. 937 (Sept. 1972).

inconvenience to employers, and promptly vindicating the public interest. It would be absurd if each member of the class discriminated against had to individually seek relief. The term "discrimination" and prohibited employment practices are not and should not be controlled by procedural sections of the FEP law; but rather should be controlled by the substantive provisions of law. Consequently, the purpose of an individual charge of discrimination like Ms. Moe's is merely to initiate the subsequent law enforcement process, and does not determine the limits of that process. *Graniteville Co., Sibley Division* v. *EEOC, supra; Jenkins* v. *United Gas Corp., supra; Sanchez* v. *Standard Brands, Inc.,* 431 F.2d 455 (5th Cir. 1970).

The concept of the charging party acting as a private attorney general has special applicability to the Connecticut Commission. Like civil rights agencies established in forty states to enforce (FEP) laws,[2] the Connecticut Commission in form and operation was patterned after the National Labor Relations Board (NLRB) upon which Congress conferred special jurisdiction to handle the complex problems of labor relations. *San Diego Building Trades Council* v. *Garmon,* 359 U.S. 236 (1959). The NLRB has been held to possess authority to vindicate the rights of the public. *Nathanson* v. *NLRB,* 344 U.S. 25, 27 (1952);

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[2] 3 CCH Employment Practices Guide ¶ 29,080, (1973). For a study of State FEP agencies *see,* Tierney, *Separate But Equal—An Analysis of State Civil Rights Law Enforcement and its Interaction with Federal Law,* 49 Notre Dame Lawyer, 205 (1973); Bonfield, *An Institutional Analysis of the Agencies Administering Fair Employment Practices Laws,* 42 N.Y.U. L.Rev. 823, 1035 (1967); Sutin, *The Experience of State Fair Employment Commissions: A Comparative Study,* 18 Vand. L. Rev. (1965)

West Kentucky Coal Co., 116 F.2d 816 (6th Cir. 1940); cf. *Jenkins* v. *United Gas Corp., supra.* Similarly, states civil rights agencies have been held to be like the NLRB in that they exercise full powers to vindicate the rights of the public as well as private rights. *City of Highland Park* v. *Michigan Fair Employment Practices Commission,* 364 Mich. 508, 111 N.W. 2d 297 (1961); *Arnett* v. *Seattle General Hospital,* 65 Wash. 2d 22, 395 P. 2d 503 (1964). Such state civil rights agencies are, in effect, public prosecutors of violations of antidiscrimination laws. Jones, *Disestablishment of Labor Unions for Engaging in Racial Discrimination—A New Use for an Old Remedy,* 1972 Wisc. L. Rev. 351, 354 (1972).

D. Technical Formalities Required of Persons Charging Discrimination

A person like Ms. Moe is not charged with having full knowledge of civil rights laws. Ms. Moe or other aggrieved persons may believe that discrimination has occurred but may be unable to perceive or understand all the sources, effects, patterns or practices of an employer's system upon their own personal case of discrimination. The FEP law contemplates the filing of charges by persons untutored in the technicalities of the law and who may not be able to fully articulate their grievances. *Love* v. *Pullman,* 404 U.S. 522 (1972); *Jenkins* v. *United Gas Corp., supra.*

There is no basis under state law for giving a different meaning and effect to an individual complaint than permitted under federal law. Indeed, the Connecticut law like federal law provides two methods to set the administrative process in motion—a charge by an indi-

vidual and a charge by the Commission itself. *Compare,* Title VII, Civil Rights Act of 1964, 42 U.S.C. 2000e 5(a)(1970). Both methods merely provide alternative means to set the administrative process in motion. Neither method does more than invoke the same law enforcing powers recited elsewhere in the statute. Sutin, *The Experience of State Fair Employment commissions: A Comparative Study,* 18 Vand. L. Rev. 965, 1019 (1965).

The purpose of the Commission initiated complaint is not to operate as the exclusive means to provide class relief. Its purpose is clearly designed to permit the Commission to act in all areas of discrimination *in the absence of an aggrieved party* filing a verified complaint. Note, *Developments in the Law: Employment Discrimination and Title VII of the Civil Rights Act of 1964,* 84 Harv. L. Rev. 1109, 1236-1239 (1971).

> The particular virtue of complaints initiated by Commissions is that they can be directed against the worst offenders. This authority is necessary to deal with businesses and unions which have not opened up employment or other opportunities to any minority, and against whom complaints are rarely filed. It is also needed to deal with those areas in which it is very difficult for one discriminated against to know whether discrimination has occurred, as is typically the case of employment agencies. Witherspoon, *Civil Rights Policy in the Federal System, Proposals for a Better Use of the Administrative Process,* 74 Yale L.J. 1171, 1191-92 (1965).

Whether a complaint is filed by an individual or the Commission is immaterial to the scope of the remedy. *Bowe* v. *Colgate-Palmolive Co., supra.* The only issue

is what remedy is appropriate to eliminate discrimination. Since discrimination was found to exist at Respondent's facility, the proper and necessary remedy was to eliminate the discrimination. The Commission's order did no more than remedy a discriminatory practice.

Even applying strict judicial standards concerning class actions to the administrative actions of the Commission, it is clear under Title VII that such standards were satisfied by the Commission's order of relief.

> Although most Title VII actions are brought by prvate individuals, there is also a public interest in the outcome of the lawsuit. While this public interest should not unduly delay the complainant from getting his private remedy if that is all he seeks, a qualified complainant who wishes to represent a broader class should be permitted to do so. Moreover, since a violation of the Act is by definition a class-wide discrimination, even the purely private litigant almost always represents interests larger than his own. For these reasons class-wide relief is almost always an appropriate remedy. Note, *Development is the Law: Employment Discrimination and Title VII of the Civil Rights Act of 1964,* 84 Harv. L. Rev. 1109, 1218-1219 (1971).

This proposition finds ample support in decisions of the federal courts. *Bowe* v. *Colgate-Palmolive Co., supra; Sprogis* v. *United Air Lines, Inc.,* 444 F.2d 1194 (7th Cir. 1971); *Jenkins* v. *United Gas Corp., supra; Hall* v. *Wertham Bag Corp., supra.*

> [T]he very nature of the rights appellants seek to vindicate requires that the decree run to the benefit not only of appellants but also for all persons similarly situated. *Bailey* v. *Patterson,* 323 F.2d 201, 207 (5th Cir. 1963).

The Connecticut Court's distinction between a class action and an individual charge was inconsistent with these principles.

The notion that class relief should be withheld because Respondent may not have understood the nature of Ms. Moe's individual charge is equally inconsistent with the nature of discrimination and the state of the law. It should not be required that Respondent receive more than fair notice prior to hearing. DAVIS ADMINISTRATIVE LAW § 8.02 (3 ed. 1972). As the record indicates, notice of the nature of the hearing was provided Respondent. Having been given notice of the issues, Respondent should not be accorded any more latitude than that accorded other Respondents under Title VII of the federal law. *McDonnell-Douglas Corp.* v. *Green, supra; Sprogis* v. *United Air Lines, supra; Bowe* v. *Colgate-Palmolive Co., supra.*

Moreover, class action procedural requisites do not properly apply to administrative agencies. It has been held that administrative tribunals have power ". . . when their authority is invoked, to control the range of investigation in ascertaining what is to satisfy the requirements of the public interest . . . ." *Interstate Commerce Commission* v. *Jersey City,* 322 U.S. 503, 516 (1944) [Citations omitted]. Administrative agencies have been accorded far more flexibility in procedures than the courts. *Lacomastic Corp.* v. *Parker,* 54 F. Supp. 138 (D. Md. 1944); DAVIS, ADMINISTRATIVE LAW § 8.02 (3 ed. 1972).

For example, agencies similar to the Commission have been permitted to formulate public interest remedies without regard to class action procedures. The

NLRB operates under procedural provisions that are virtually identical to the Commission. 29 U.S.C. § 160 (1970). Yet NLRB proceedings have been held to be looking to the public interest in bringing unfair labor practices to an end *NLRB* v. *West Kentucky Coal Co.*, 116 F.2d 816 (6th Cir. 1940); *Agwilines, Inc.* v. *NLRB*, 87 F.2d 146 (5th Cir. 1936). The NLRB may issue cease and desist orders against activities found to be unfair labor practices. *Local 57, International Ladies Garment Workers Union, AFL-CIO* v. *NLRB*, 374 F.2d 295 (D.C. Cir. 1967), *cert. denied* 387 U.S. 942 (1967). The power of the NLRB is not limited to correction of past unlawful practices; it has the power and the duty to prevent future practices. *NLRB* v. *Kelly & Picerve, Inc.*, 298 F.2d 895 (1st Cir. 1962). Certainly a state civil rights agency has the same power and duty. Cf., *Griggs* v. *Duke Power Co., supra; see Louisiana* v. *United States*, 380 U.S. 145 (1965).

CONCLUSION

Finally, it is important to reiterate that the Connecticut and federal FEP laws are substantially the same. The basis of Ms. Moe's charge was founded upon state and federal laws and constitutional principles. Ms. Moe should not be denied class relief by a state court for asserting a claim to which she would have obtained relief under the federal scheme. Under our federal system, the implementation of these two FEP laws should be congruent thereby reducing necessary duplication of effort. Indeed, if the Commission is to continue as a viable operation, it must be permitted to apply rights and remedies substantially equivalent to federal law.

For the foregoing reasons, it is urged that the Court grant Petitioner Writ of Certiorari.

Respectfully submitted,

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In The Supreme Court Of The United States

OCTOBER TERM, 1973

No. 73-703

CONNECTICUT COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES,

Petitioner,

v.

VEEDER ROOT COMPANY, A DIVISION OF VEEDER INDUSTRIES, INC.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT
OF THE STATE OF CONNECTICUT

BRIEF FOR RESPONDENT IN OPPOSITION

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TABLE OF CONTENTS

Page

OPINIONS BELOW 1

JURISDICTION 2

QUESTIONS PRESENTED. 2

STATEMENT OF THE CASE. 3

ARGUMENT 9

I. No Substantial Federal Question is Presented When the Connecticut Supreme Court, in Interpreting Statutes and Regulations of that State, Requires the Attorney General of Connecticut to Give Notice to All Affected Members of a Class, Before Permitting a State Administrative Agency to Render Class Relief. 9

A. Procedural Due Process---The Framework of this Action. 9

B. The Connecticut Supreme Court Merely Established the Criteria for Procedural Due Process Before a State Administrative Agency, Consistent with Substantive Due Process Standards 14

II. The Federal Analogy to Class Actions Brought Under Title VII of the Civil Rights Act is Inapposite. 19

III. The Supreme Court of Connecticut Does Not Have an Affirmative Duty to Provide Relief Consistent with Title VII of the 1964 Civil Rights Act as Interpreted by the Federal Courts when a Civil Rights Action Prosecuted Under the Connecticut Fair Employment Practices Act has Failed to Meet that State's Procedural Due Process Requirements. 23

Table of Contents Continued

Page

CONCLUSION 28

TABLE OF AUTHORITIES

CASES:

Bowe v. Colgate Palmolive Co, 416 F. 2d, 711 (7th Cir. 1969). 20

Cafeteria & Restaurant Workers Union v. McElroy, 367 U.S. 886 (1961) 11

Cohen v. Beneficial Industrial Loan Corp., 337 U.S. 541 (1949). 26

Covey v. Town of Somers, 351 U.S. 141, (1956) 13

Draper v. Clark Dairy, Inc., 17 Conn. Supp. 93 (1950). 16,17,20

England v. Medical Examiners, 375 U.S. 411 (1964) 25,26

Fogg v. New England Telephone & Telegraph Co., 346 F.Supp. 645 (D.N.H. 1972) . .21,22

Goldberg v. Kelly, 397 U.S. 254 (1970) . . 12

Gonzales v. United States, 348 U.S. 407, (1955) 12

Hannah v. Larche, 363 U.S. 420 (1960). . . 11

Hurn v. Oursler, 289 U.S. 238 (1933) . . . 25

Hutchings v. United States Industries, Inc., 428 F. 2d 303 (5th Cir. 1970). 21

Jenkins v. United Gas Corp., 400 F. 2d 28 (5th Cir. 1968) 22

Table of Contents Continued

Page

Morgan v. United States, 304 U.S. 1, (1938). 10,11,12

Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950). 13

New Haven v. New Haven Water Co., 132 Conn. 496, 45 A. 2d (1946). 11

Oregon v. Mitchell, 400 U.S. 112 (1970) . . 26

Perez v. Campbell, 402 U.S. 637 (1971). . . 24

Rosado v. Wyman, 397 U.S. 397 (1970). . . . 25

Siler v. Louisville & Nashville R. Co., 213 U.S. 175 (1909) 25

Speiser v. Randall, 357 U.S. 513 (1958) . . 13

United Mine Workers v. Gibbs, 383 U.S. 715 (1966). 25

CONSTITUTIONS, STATUTES AND REGULATIONS:

United States Constitution:

Article VI, Clause 2. 24
Amendment 14. 10

United States Statutes:

Title VII, 1964 Civil Rights Act, U.S.C. § 2000e et seq 16,20,24

Connecticut General Statutes (Revision of 1958):

§ 31-128. 7
§ 31-126. 15
§ 31-127. 18
§ 52-105. 18
§ 31-217. 18

Table of Contents Continued

Connecticut General Statutes (Revision of 1958):

§ 3-125. 20
§ 4-177. 21
§ 4-183. 21

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1973

No. 73-703

CONNECTICUT COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES,

Petitioner,

v.

VEEDER ROOT COMPANY, A DIVISION OF VEEDER INDUSTRIES, INC.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CONNECTICUT

BRIEF FOR RESPONDENT IN OPPOSITION

OPINIONS BELOW

The decision and order of the Hearing Tribunal of the Connecticut Commission on Human Rights and Opportunities is unreported and is fully and accurately printed in Appendix A of the Petition. The memorandum of decision of the Superior Court for Hartford

County, State of Connecticut is reported in 4 Employment Practices Decisions (E.P.D.), Paragraph 7801; and in 4 Fair Employment Practices (F.E.P.) Cases 783; and is printed fully and accurately in Appendix D of the Petition. The opinion of the Supreme Court of the State of Connecticut is reported in 35 Connecticut Law Journal, No. 5, p. 1 (July 31, 1973); and in 6 F.E.P. Cases 186; and is fully and accurately printed in Appendix E of the Petition.

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition.

QUESTIONS PRESENTED

1. Is a substantial federal question presented where the Connecticut Supreme Court, in interpreting its own statutes and rules of practice, requires the Attorney General of the State of Connecticut, who is charged with the duty of litigating individual civil rights complaints, to give proper notice to all affected members of an alleged class in order for a Connecticut Civil Rights Tribunal to render class relief?

2. Does the Supreme Court of the State of Connecticut have the right to fix certain minimal standards of procedural due process in order to insure that all parties to an alleged class action have full and fair notice thereof?

3. Is the federal analogy to class actions brought under Title VII of the Civil Rights Act applicable in light of the Connecticut statutory framework for enforcing civil rights?

4. Does the Supreme Court of the State of Connecticut have the affirmative duty to provide relief consistent with Title VII of the 1964 Civil Rights Act as interpreted by the federal courts when deciding a civil rights case brought under the Connecticut Fair Employment Practices Law?

STATEMENT OF THE CASE

Respondent, Veeder-Root Company, is an operating division of Veeder Industries Inc., a Connecticut corporation. The Hartford, Connecticut, plant of Veeder-Root Company, among other products, manufactures approximately 200 different types of basic counters,or

"families" of counters, such as that which measures gallonage and cost in a typical gasoline pump. Within each of the 200 "families" of basic counters there are variations, so that overall the Plant makes and has made about 4,000 different kinds of counters. Of the 200 basic families of counters manufactured at plaintiff's Plant, Department 99 where the original complaint arose makes, or has made, 150 of them.

The counter assembly work in Department 99 is done by three job classifications - from lowest to highest, assembler A, assembler B and assembler A (prime). The production mix of the department is such that higher-graded employees may on occasion be assigned to perform assembly work usually performed by the lower labor grades in order to fill customer requirements. This is a practical manufacturing necessity and is contemplated by the provisions of the collective bargaining agreement with Local 354, District 26, of the International Association of Machinists, which provides for wage rates established on a weekly basis and affords protection against the

down-grading of employees.

The job descriptions for assembly A, assembly B and assembly A (prime) indicate on their face substantial differences in the skill required to perform the three assembly jobs. The job description of assembly A requires a "good" knowledge of "counter mechanisms", calls for the complete assembly of a "specific line or type of counters" from parts and subassemblies provided from stock, and the use of a variety of hand tools to do such assembly work. The job descriptions of assembly B and A (prime), on the other hand, call for the complete assembly of a "variety" of counters and critical machining, measuring, straightening, adjusting, testing and analytical operations.

The original complainant, Hilda G. Moe, has been employed by the Respondent for over 21 years. For some time prior to, and as of the date of the complaint, she was classified as an assembler A and her job assignment was the assembly of the specific line of counter known as the Visi-Counter. She builds this line of counter complete obtaining parts from stock, checking the blueprints for the

component part numbers and uses the various hand tools specified in the job description for assembly A. She has never assembled, either partly or completely, almost all of the Series of counters assigned to assembler B and A (prime).

On February 26, 1969 Miss Moe filed a complaint with the Connecticut Commission on Human Rights and Opportunities against the Respondent company claiming a violation of the Connecticut Fair Employment Practices Act. (See Appendix A, infra). In her complaint Miss Moe referenced a conversation she had with her supervisor on January 22, 1969 which formed the basis for her allegation of discrimination. She then alleged that "I feel I am being discriminated against because of my sex (female)." (Id, p. 2.a)

On December 19, 1969 the Commission notified the Respondent that a hearing would be held on January 20, 1970, "upon said complaint against you and to answer the charges of said complaint." (See Appendix B, infra). On December 30, 1969 the Respondent filed an answer to the complaint denying any violation

of the applicable section of the Connecticut Fair Employment Practices Act. (See Appendix C, infra).

Hearings were held on January 20th, January 27th, March 31st, April 20th, April 21st, May 18th, May 19th, November 10th and December 10th, 1970 before a Hearing Tribunal consisting of three Hearing Examiners (See Decision of Hearing Tribunal, Appendix A of Petition). On May 18, 1971, the Tribunal issued its order, a copy of which is printed in full in the Petition. In its decision the Tribunal found that the Respondent had discriminated against Miss Moe on the basis of her sex. It went further, however, and found such discrimination applicable to all female members of Department 99 and ordered back wages be paid to Miss Moe from the effective date of the Connecticut Fair Employment Practices Act.

On May 28, 1971 the Respondent, pursuant to Section 31-128 of the Connecticut General Statutes (Revision of 1958), petitioned the Superior Court for Hartford County for a review of the Tribunal's order. In that petition the Respondent raised various substantive and

procedural claims of error. In its Answer the Commission, by way of counter claim, sought to have the Tribunal's order enforced by the court.

The petition was referred to the Hon. Howard W. Alcorn, a Referee of the State of Connecticut, to hear the evidence, report the facts and enter judgment in the case. After a review of the entire Record and lengthy briefs by both the company and the Commission judgment was entered affirming the Tribunal's substantive finding that Miss Moe had been discriminated against on the basis of her sex but modifying the Tribunal's order insofar as it purported to award damages to an entire class of persons retroactive to the effective date of the Connecticut Fair Employment Practices Act. (See Memorandum of Decision of the Superior Court for Hartford County, Appendix D of the Petition). No appeal was taken by the Respondent from the decision on the substantive issue of discrimination. The Commission appealed from the court's decision modifying the Tribunal's order to the Supreme Court of the State of Connecticut. That court affirmed the judgment of the Superior Court

insofar as it held class relief to be inappropriate and modified the award of back pay to Miss Moe to include the differential from the date ninety days before the filing of the complaint to the date of the complaint. (See Opinion of the Supreme Court of the State of Connecticut, Appendix E of the Petition).

ARGUMENT

I. NO SUBSTANTIAL FEDERAL QUESTION IS PRESENTED WHEN THE CONNECTICUT SUPREME COURT, IN INTERPRETING STATUTES AND REGULATIONS OF THAT STATE, REQUIRES THE ATTORNEY GENERAL OF CONNECTICUT TO GIVE NOTICE TO ALL AFFECTED MEMBERS OF A CLASS, BEFORE PERMITTING A STATE ADMINISTRATIVE AGENCY TO RENDER CLASS RELIEF.

A. PROCEDURAL DUE PROCESS---THE FRAMEWORK OF THIS ACTION.

The resolution of disputes between citizens by an impartial arbiter who hears and decides issues of fact and law has been the keystone of our rule of law. The willingness of litigants to have their differences resolved by such third persons depends in large measure on their belief that the procedure by which their respective cases are presented to him or it will be fair and will insure a full presentation of the issues. To this end the courts have developed voluminous bodies of law

which govern the method by which disputes must be brought and the evidence which is admissible with regard to the questions at bar.

However, with the growth of governmental agencies, each with its own area of social interest, there developed a crazy-quilt of procedure applicable to each body. While the administrative agency ostensibly fills the role of arbiter of citizen disputes, frequently, by virtue of its legislative mandate, it actually becomes an adversary in the proceedings over which it has jurisdiction. As a result judicial intervention has been necessitated to review not only the rule making process of the agency but often times the legislative grant of power to it as well.

Because of the overlap of administrative, legislative and quasi-judicial functions inherent in the exercise of an agency's power the courts have been called upon time and again to insure that the use of such governmental power measures up to the fundamental fairness required by the due process clause of the Fourteenth Amendment to the United States Constitution. In Morgan v. United States,

304 U.S. 1, 14 (1938), this court said:

> The vast expansion of this field of administrative regulation in response to the pressure of social needs is made possible under our system by adherence to the basic principles that the legislature shall appropriately determine the standards of administrative action and that in administrative proceedings of a quasi-judicial character the liberty and property of the citizen shall be protected by the rudimentary requirements of fair play. (1)

As with so many aspects of governmental regulation of citizen interests "consideration of what procedures due process may require under any given set of circumstances must begin with a determination of the precise nature of the governmental function involved as well as of the private interest that has been affected by governmental action." Cafeteria & Restaurant Workers Union v. McElroy, 367 U.S. 886, 895 (1961). See also Hannah v. Larche, 363 U.S. 420, 440, 442 (1960). Thus it has been held that those who are brought into contest with the government in a

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(1) Connecticut adopted the notion of procedural due process in administrative proceedings as part of the public policy of that state in New Haven v. New Haven Water Co., 132 Conn. 496, 512, 45 A. 2d 831 (1946).

quasi-judicial proceeding aimed at the control of their activities are entitled to be fairly advised of what the government claims so that they may properly prepare and present a response thereto. Gonzales v. United States, 348 U.S. 407, 414 (1955); Morgan v. United States, supra, 304 U.S. at p. 18. Included among the necessary rights inherent in the presentation of one's case is the right of confrontation of witnesses and cross examination. Goldberg v. Kelly, 397 U.S. 254, 269 (1970).

The reason for insisting upon knowing who is making a claim and the basis for such a claim is obvious. In order to frame a defense properly it is imperative that a litigant know the parameters of the claim, the persons making same and the facts that support it. "To experienced lawyers it is commonplace that the outcome of a lawsuit --- and hence the vindication of legal rights --- depends more often on how the fact finder appraises the facts than on a disputed construction of a statute or interpretation of a line of precedents. Thus the procedures by which the facts of the case

are determined assume an importance fully as great as the validity of the substantive rule of law to be applied." Speiser v. Randall, 357 U.S. 513, 520 (1958). It is axiomatic that the framework within which a case is presented is determined by the parties before the court or administrative agency hearing and deciding the dispute. It is for this reason that this court said in Covey v. Town of Somers, 351 U.S. 141, 146 (1956) citing Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314-315 (1950):

> An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. . . .

In the present case, notice of the claim lodged against the Respondent by Miss Moe was never given to the other members of Respondent's Department 99 nor to the union with whom Respondent has signed a collective bargaining agreement. Yet the decision by the Hearing Tribunal affected not only the other workers in Department 99, but the union itself.

Clearly notice should have been given to all interested parties.

B. THE CONNECTICUT SUPREME COURT MERELY ESTABLISHED THE CRITERIA FOR PROCEDURAL DUE PROCESS BEFORE A STATE ADMINISTRATIVE AGENCY, CONSISTENT WITH SUBSTANTIVE DUE PROCESS STANDARDS.

In its Petition for Certiorari the petitioner makes repeated claims that the Connecticut Supreme Court imposed a strict application of local rules of practice against a "lay pleader" with the result that her Fourteenth Amendment rights were violated.(2) The fallacy of this argument is that under Connecticut's statutory and administrative framework, the complaint, once filed, becomes a Commission complaint and the Attorney General for the State of Connecticut becomes the advocate for the complainant. Therefore, it does not lie with the petitioner to complain that it should be held to a standard of pleading that insures full and adequate notice to all interested parties.

In her complaint dated February 26, 1969, (Appendix A, infra) Miss Moe cites two specific

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(2) Petitioner's Brief, pp. 8-10, 15

incidents involving her supervisor and on the basis of these incidents and her prior employment with the Respondent she alleges:

> I feel I am being discriminated against because of my sex (female). (Id., p. 2.a)

As a result of this complaint, the Commission on Human Rights and Opportunities, acting through its director, ordered the Respondent to appear for a hearing "upon said complaint" and to "answer the charges of said complaint." (Appendix B, infra). To this complaint the Respondent filed an answer denying any violation of Section 31-126 "with respect to complainant, Hilda G. Moe" (Appendix C, infra). Taken together, these three documents constitute the "pleadings" which framed the issues and upon which evidence was taken by the Tribunal. The trial court below specifically found that "the clear import of the complaint was that she, as one of the women in the department, was, without any bona fide occupational qualification or need, being discriminated against in compensation because of her sex." (Petitioner's Appendix D, p. 66).

It is conceded by all parties to this action that once the complaint of an individual

goes beyond the investigative stage and reaches the hearing stage it becomes the Commission's complaint.[3]

The trial court held as a matter of law that "the Commission becomes the party in support of the complaint and the adversary party is the one against whom complaint is made."[4] (Petitioner's Appendix D, p. 59). This Connecticut system of procedure is what limits this case to a determination based upon Connecticut law and which makes the numerous references in Petitioner's brief to federal cases decided on the basis of Title VII of the Civil Rights Act of 1964 (42 U.S.C. §2000e et seq.) inapposite.[5] It was upon this basis that the trial court

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(3) In its brief filed with the Connecticut Supreme Court, the petitioner said at p. 13:

"In the instant case, the complaint itself attacks the entire job classification structure for assemblers in Department 99 and once it had been filed with the defendant it became a Commission complaint.... By statute, the complaint was prosecuted by the public attorney in civil matters, the Attorney General."

(4) See also Draper v. Clark Dairy, Inc., 17 Conn. Supp. 93, 94-95 (1950).

(5) It is noteworthy that Justice Alcorn, former Chief Justice of the Connecticut Supreme

found that the attempt of the Tribunal to convert a single complaint to an order purporting to give relief to an entire class was a "radical and unsound departure. . . from the concept of due process of law which has long obtained in Connecticut." (Petitioner's Appendix D, p. 67).

In view of its role as a substitute complainant, it ill behooves the Petitioner herein to argue that the ruling of the Connecticut Supreme Court was based upon "the complainant's failure to draft her lay complaint in accordance with rules appropriate to a lawyer's hand." (Petitioner's Brief, p. 15). Indeed by the time the matter has reached the hearing stage the role of complainant has been assumed

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(5) Court, who decided this case as a State referee also was called upon to rule on the validity of the same procedure followed by the old Inter-Racial Commission in Draper v. Clark Dairy, Inc., 17 Conn. Supp. 93 (1950). He quickly saw the inherent unfairness of what purports to be a quasi-judicial process:

"Since the proceeding is one in which the commission presents the complaint before itself as an arbiter, it is essentially inquisitorial. It lacks the elements of a judicial or quasi-judicial proceeding in which parties litigate adverse interests before an impartial tribunal." (Id., p. 96)

by the Commission, which has its own capable lawyer, to wit: the Connecticut Attorney General. As the trial court found:

> If the Commission had wished to treat the complaint as a spring board for a class action action, it could have made its own complaint on behalf of all women in the department. § 31-127; (6) see § 52-105. It did not do so, however, but elected to prosecute the individual complaint of Hilda Moe before the tribunal. (Petitioner's Appendix D, p. 67).

Similarly, the Connecticut Supreme Court held:

> Since the individual complaint of Hilda Moe fairly read, did not provide the Respondent, the plaintiff, with notice of the scope of the action and since the Commission, under § 31-217 of the General Statutes, was empowered to issue a new complaint attacking department-wide sex discrimination which would have apprised the plaintiff of the scope of the action, we conclude that the plaintiff was justified in its belief that the Commission's attack was directed solely at sex discrimination as applied only to Hilda Moe. It was,therefore, improper for the Commission to issue an order requiring the plaintiff to cease and desist from department-wide discrimination. (Petitioner's Appendix E, p. 80).

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(6) Connecticut General Statutes (Revision of 1958) § 31-127, provides in part that when an individual complains to the Connecticut Commission on Human Rights and Opportunities about alleged discriminatory practices, "the Commission, whenever it has reason to believe that any person has been engaged or is engaged in an unfair employment practice, may issue a complaint". (Emphasis added).

Thus this case is really concerned with the pleading requirements to be imposed upon the Commission itself, not with those required of Miss Moe. The Commission, with its own staff counsel and ably represented by an experienced attorney from the office of the Attorney General, is simply being asked to fulfill the notice and pleading requirements of any other litigant represented by counsel. It is contended that in the burgeoning area of administrative law it would be improvident for this Court to permit an improvised class action procedure to be developed on an ad hoc basis. Surely, the State of Connecticut should be permitted to develop an orderly administrative framework that insures procedural due process to all parties involved.

II. THE FEDERAL ANALOGY TO CLASS ACTIONS BROUGHT UNDER TITLE VII OF THE CIVIL RIGHTS ACT IS INAPPOSITE.

The thrust of Petitioner's claim is that it was improper for the Connecticut courts to decide the class action aspect of this case on the basis of Connecticut law, by raising the federal analogy. In doing so, it relies on

Bowe v. Colgate Palmolive Co., 416 F. 2d 711 (7th Cir. 1969) in which the United States Court of Appeals for the Seventh Circuit held that the District Court could remedy a discriminatory job situation by granting relief not only to the named plaintiff, but to all employees similarly situated. However, that court specifically held that under Title VII of the 1964 Civil Rights Act, a plaintiff brings an action as a "private attorney general." 416 F. 2d at 719.

However, under Connecticut's statutory framework, it is the Commission itself that becomes the complainant and it is represented by the Attorney General, who is charged by virtue of his office with the duty of representing the Commission.(7) Because the Commission is both the complainant, the fact finder and ultimate arbiter the procedure, as was noted earlier, is "inquisitorial" and lacking in the elements of a judicial or quasi-judicial proceeding. Draper v. Clark Dairy, Inc., 17 Conn. Supp. 93, 96 (1950). Since the

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(7) Connecticut General Statutes (Revision of 1958), § 3-125.

whole panoply of procedural due process rights, which are inherent in a judicial setting, are missing from the administrative procedure surrounding the practice before the Connecticut Commission on Human Rights and Opportunities, it is doubly important for the court to insure that minimal notice requirements are met.(8)

Thus, in cases such as Hutchings v. United States Industries, Inc., 428 F. 2d 303 (5th Cir. 1970) and Fogg v. New England Telephone & Telegraph Co., 346 F.Supp. 645 (D.N.H. 1972) wherein class actions were permitted under the federal statute, the courts speak of the judicial role in the "private attorneys general" actions and the attendant procedural safeguards that come into play for all interested parties. In Fogg, there was an attempt

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(8) Interestingly enough, Connecticut recently adopted the Uniform Administrative Procedures Act, which specifically requires that all interested parties be given notice of the pendency of a hearing in a contested case. See Conn. Gen. Stats. (Rev. 1958) § 4-177. In any appeal from a decision of an administrative agency, copies of the appeal must be served on "all parties of record." Id. § 4-183. While this law did not become effective until January 1, 1972, some eight months after the date of the Hearing Tribunal's decision, the

to amend the complaint to make it a class action some two years after the case was begun. The court refused to permit the amendment on the ground of laches, but permitted evidence of plantwide discrimination in proof of the case chief, saying that the plaintiff took on the mantle of the sovereign in view of her role as a private attorney general. 346 F.Supp. at 650.

In Jenkins v. United Gas Corp., 400 F.2d 28 (5th Cir. 1968), which Petitioner relies on for the claim that the court should grant class relief in employment discrimination suits against private employers (Petitioner's Brief p. 7), the court permitted class wide relief notwithstanding the individual complaint, because it specifically found that the complaint was a model of specificity in alleging plantwide, system wide racial discrimination (Id. at p. 31) and therefore, took evidence and decided the case on that basis. In the present case, the Hearing Tribunal attempted

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(8) Commission has yet to amend its own regulations to conform to the notice and hearing requirements called for in the statute.

to convert this case from a simple complaint to a class action without even a bow to the procedural requirement of notice and a right to be heard by all parties involved. The trial court quite properly held that such a procedure was a radical and unsound departure "from the concept of the due process of law which has long obtained in Connecticut." (Petitioner's Appendix D, p. 67). Because of Connecticut's notice requirements and the role of the Connecticut Attorney General and Commission on Human Rights and Opportunities as actual litigants herein, the federal analogy simply does not apply.

III. THE SUPREME COURT OF CONNECTICUT DOES NOT HAVE AN AFFIRMATIVE DUTY TO PROVIDE RELIEF CONSISTENT WITH TITLE VII OF THE 1964 CIVIL RIGHTS ACT AS INTERPRETED BY THE FEDERAL COURTS WHEN A CIVIL RIGHTS ACTION PROSECUTED UNDER THE CONNECTICUT FAIR EMPLOYMENT PRACTICES ACT HAS FAILED TO MEET THAT STATE'S PROCEDURAL DUE PROCESS REQUIREMENTS.

A theme running throughout the Petitioner's brief, is that the Connecticut courts had an affirmative duty pursuant to the Supremacy

Clause of the United States Constitution, (9) to grant relief sought under the Connecticut Fair Employment Practices Act as though the claim has been brought under Title VII of the 1964 Civil Rights Act and in doing so, to apply the case law developed in the federal courts. In support thereof, Petitioner relies on Perez v. Campbell, 402 U.S. 637, 652 (1971), for the proposition that "state legislation which frustrates the full effectiveness of federal law, is rendered invalid by the Supremacy Clause." (Petitioner's Brief, p. 14). This argument implies a process in which the Petitioner seeks to engraft the entire federal Civil Rights Act and all of the attendant federal court decisions interpreting same onto the substantive and procedural law of Connecticut. Out of this process would emerge

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(9) United States Constitution, Article VI, Clause 2:

This Constitution, and the Laws of the United States, which shall be made in pursuance thereof; and all Treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the Constitution or laws of any state to the contrary notwithstanding.

the reverse of the so-called "pendent jurisdiction" which exists in the federal courts.(10) The state courts would thus be vested with jurisdiction to enforce and interpret a federal statute.

If the contention that the courts of the State of Connecticut have the duty of enforcing rights that accrue from a federal statute as interpreted by federal courts becomes law, then the entire concept of federalism would be destroyed. In effect Title VII of the Civil Rights Act would be subject to 50 different interpretations by the courts of 50 different states instead of being interpreted by the courts of the federal judicial system. Clearly this was not the intent of Congress. As this court has said, while state courts are the final expositors of state law, the federal judiciary has primacy in deciding questions of federal law. England v. Medical Examiners,

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(10) See e.g. Siler v. Louisville & Nashville R. Co., 213 U.S. 175, 191 (1909); Hurn v. Oursler, 289 U.S. 238, 243 (1933); United Mine Workers v. Gibbs, 383 U.S. 715, 721-729 (1966); Rosado v. Wyman, 397 U.S. 397, 405 (1970).

375 U.S. 411, 415 (1964); Oregon v. Mitchell, 400 U.S. 112, 249 (1970). Included among the areas of law reserved to the states, is the power of a state to set the terms on which it will permit litigation in its courts. Cohen v. Beneficial Industrial Loan Corp., 337 U.S. 541 (1949). A logical corrollary of this rule, is that a state can set minimal procedural requirements for litigation before its administrative agencies.

Respondent herein has contended throughout this brief, that the scope of this petition is really limited to the procedural aspects of Connecticut's Fair Employment Practices Act. Connecticut is free to interpret its own laws and to establish its own administrative procedures, so long as they are consistent with federal constitutional guarantees. There is nothing in the decisions of either the Connecticut trial court or its Supreme Court, dealing with the procedural failings of the Petitioner in expanding its order to include a class of persons not properly summoned before it or in limiting the award of back pay to 90

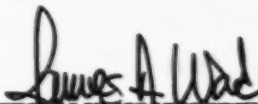
days prior to the date of the complainant's complaint that flies in the face of the Constitution.

What the Petitioner seeks to do however, is to challenge the autonomy of the state courts and to circumvent the state's legislative and judicial rule making process by engrafting a federal law onto the state of Connecticut. It is contended that there is no authority for such a procedure. The trial and appellate courts of the State of Connecticut are fully competent to protect the substantive civil rights of all of its citizens, including both employees and employers. But to create a new reverse "pendent jurisdiction" which would not only vest state courts with the power to interpret federal statutes, but with a duty to enforce the same, would be unwise.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the Petition for a writ of certiorari should be denied.

Respectfully submitted,



James A. Wade, Esq.
Robinson, Robinson & Cole
799 Main Street
Hartford, Connecticut 06103
Counsel for Respondent

December 28, 1973

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1973

No. 73-703

CONNECTICUT COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES,

Petitioner,

v.

VEEDER ROOT COMPANY, A DIVISION OF VEEDER INDUSTRIES, INC.,

Respondent.

APPENDIX TO BRIEF FOR

RESPONDENT IN OPPOSITION

APPENDIX A

STATE OF CONNECTICUT

Commission on Human Rights and Opportunities

HILDA G. MOE, Complainant	)
vs.	) Complaint No. F.E.P.-Sex 4-1
VEEDER-ROOT, INC. Respondent	) Feb. 26, 1969

Complaint Against Unfair Employment Practice

To the Commission on Human Rights and Opportunities: I Hilda G. Moe, residing at 56 Water St., So. Glastonbury, complain and say that Veeder-Root, Inc., residing at 28 Sargeant St., Hartford, is violating subsection (a) of Section 31-126 of Chapter 563 of the General Statutes of Connecticut, as amended.

On or about January 22, 1969, I spoke with Charles Smith, the general manager of my department, to ask him why women assemblers in my department were doing the same jobs as the men assemblers-yet the women were only receiving $2.21/hr. while the men received $2.69/hr. Mr. Smith stated that there were a lot of things that men were supposed to do that women weren't doing. The things he then mentioned I have not seen men doing. I asked to see the men's job classification which he refused to show me.

After July 7, 1965 when the Civil Rights Law of 1964 went into effect I had also asked my supervisor when women would start getting the same pay as men. After consulting a

superior, my supervisor stated, "This company isn't ready to pay women the same as men!"

I have worked for this company for twenty years. I have been working in Dept. 99 for nine years now. I do not feel the men are doing any different work than the women are. On the basis of these two incidents and my past experience in this company, I feel I am being discriminated against because of my sex (female).

Dated at Hartford this 26 day of February,1969.
Hilda G. Moe

Subscribed and sworn to before me this 26 day of February, 1969.
Attest: A True Certified Copy
Judith V. Beirs

APPENDIX B

STATE OF CONNECTICUT

Commission on Human Rights and Opportunities
90 Washington Street, Hartford, Connecticut 06115

Notice of Public Hearing

To: Veeder-Root Co.
799 Main Street
Hartford, Connecticut

Attention: L.E. Baldwin, Vice President
(Veeder Industries, Inc.)

Pursuant to Section 31-127 of the Connecticut General Statutes as amended, and to Section 31-125-19 of the Rules and Regulations of the Commission on Human Rights and Opportunities, we herewith transmit a certified copy of the complaint of Hilda G. Moe relative to her complaint filed with the Commission on Human Rights and Opportunities on February 26, 1969

in accordance with the provisions of Section 31-126 of the Connecticut General Statutes as amended.

Notice is hereby given to you to appear for a hearing to be held in Room 302, 90 Washington Street, Hartford, Connecticut on Tuesday, the 20th day of January 1970 a.d. at ten o'clock in the morning upon said complaint against you and to answer the charges of said complaint.

You may by yourself or your attorney file an answer to this complaint in writing signed by yourself or your attorney, and filed with two copies at the office of the Commission on Human Rights and Opportunities at 90 Washington Street, Hartford, Connecticut, within five days of date of service of this complaint. Failure to file such an answer shall be deemed an admission of the allegations of this complaint.

Dated at Hartford, Connecticut this 19th day of December 1969 a.d.

Connecticut Commission on Human Rights & Opportunities

By Arthur L. Green
Director

Enclosure:
(1) Complaint dated 2-26-69
Attest,

Nathan Ticotsky
Deputy Sheriff

APPENDIX C

In the Matter of:
STATE OF CONNECTICUT
COMMISSION ON HUMAN RIGHTS
AND OPPORTUNITIES

ex rel. HILDA G. MOE Complainant	)
vs.	) December 30,1969
VEEDER-ROOT COMPANY DIVISION OF VEEDER INDUSTRIES, INC. Respondent	)

Answer of Respondent Veeder-Root Company

Respondent denies any violation of Section 31-126, subsection (a), of Chapter 563 of the General Statutes of Connecticut as amended with respect to Complainant Hilda G. Moe.

Veeder-Root Company
Division of Veeder Industries Inc.
By Lucian E. Baldwin
Vice President
Veeder Industries Inc.
P.O. Box 627
Hartford, Connecticut 06102